TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 90

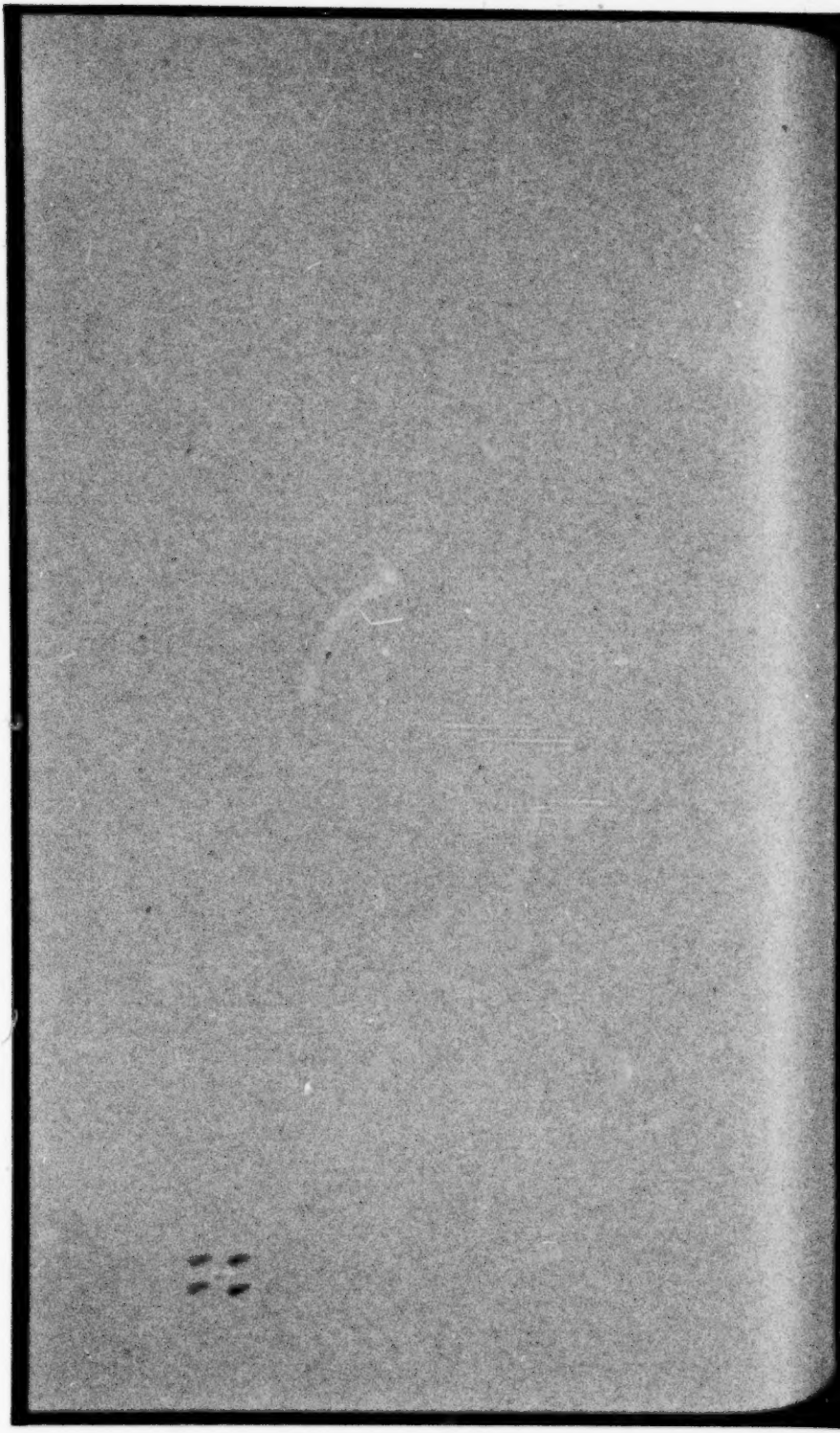
MABEL G. REINECKE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, PETITIONER

vs.

THE NORTHERN TRUST COMPANY, AS EXECUTOR UNDER THE LAST WILL AND TESTAMENT OF A. C. BARTLETT, DECEASED

IN WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 10, 1928
CERTIORARI GRANTED APRIL 23, 1928



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[Caption omitted.]

[Præcipe for summons; omitted in printing.]

[Summons and marshal's return; omitted in printing.]

In United States District Court

Declaration

Filed May 12, 1925

The Northern Trust Company, as executor under the last will and testament of Adolphus C. Bartlett, deceased, by Wilson, McIlvaine, Hale & Templeton, its attorneys, complains of Mabel G. Reinecke, as collector of internal revenue of the United States of America, for the first district of the State of Illinois, defendant in this case, summoned of a plea of trespass on the case on promises.

First Count

For that whereas the plaintiff alleges:

1. That it is, and was during all of the times hereinafter mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a resident and citizen of the State of Illinois, having its principal place of business in the city of Chicago, in the State of Illinois, and in the said first internal-revenue district of the State of Illinois.

2. That the defendant at the times more specifically mentioned was, and now is, a resident of the city of Chicago, in the State of Illinois, for the Northern District of Illinois, in the Eastern Division thereof, and the duly appointed and qualified United States collector of internal revenue for the first district of the State of Illinois.

3. That this suit is of a civil nature, and arose under and by virtue of the Constitution and laws of the United States of America, and the amount involved in this controversy exceeds, exclusive of interests and costs, the sum of $3,000.

4. That Adolphus C. Bartlett died testate on the 30th day of May, 1922, a citizen of the United States and of the State of Illinois, and a resident of the city of Chicago, in the county of Cook and State of Illinois, and the first internal-revenue district of the State of Illinois.

5. That the last will and testament of Adolphus C. Bartlett, bearing date the 1st day of March, 1919, together with the codicil thereto, bearing date the 18th of March, 1921, was thereafter on, to wit, the 22d day of July, 1922, duly admitted to probate in the probate court of Cook County, Illinois.

6. That by the terms of the said last will and testament the said testator, in paragraph 19 thereof, constituted and appointed the

plaintiff herein, the Northern Trust Company, of Chicago, Illinois, executor of the said last will and testament.

7. That on, to wit, the 22d day of July, 1922, letters testamentary were duly issued by the said probate court of Cook County to the plaintiff, the Northern Trust Company, as executor under the said last will and testament of Adolphus C. Bartlett, deceased, and the plaintiff, the Northern Trust Company, thereupon duly qualified as such executor, and is now acting in such capacity, and said letters testamentary are still in full force and effect.

8. That on or about the 29th day of May, 1923, the plaintiff herein, as executor of the estate of Adolphus C. Bartlett, deceased, in accordance with the requirements of the estate-tax law, being Title IV of the revenue act of 1921, and approved and in force November 23, 1921, and pursuant to the regulations of the Treasury Department and the Commissioner of Internal Revenue of the United States in that respect, filed its estate-tax return, setting forth the assets of the said estate in the hands of the plaintiff as such executor.

9. That the said return was filed in the office of the defendant herein, Mabel G. Reinecke, as the collector of internal revenue of the United States for the first district of Illinois, at Chicago, Illinois.

10. That a tax of $225,407.01 upon the net value of the said estate of Adolphus C. Bartlett, so shown by said return, was assessed, and thereupon paid by the plaintiff as executor as aforesaid to the said Mabel G. Reinecke, collector as aforesaid, on, to wit, the 29th day of May, 1923.

11. That the revenue act of 1921, heretofore referred to, imposed a tax upon a decedent's net estate, which was to be determined by deducting from the decedent's gross estate certain allowances provided for in the statute.

And it further provided as follows:

"Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

"(a) * * *

"(b) * * *

6 "(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title."

12. That the said Adolphus C. Bartlett during his lifetime, and on or about the 1st day of March, 1919, and in and by a certain

indenture of trust bearing the said date, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of Cook, and State of Illinois, as trustee, certain properties more specifically described in the said instrument. The said indenture of trust, for the purposes of identification, bears the number of the Northern Trust Company, No. 4477, and was in words and figures as follows:

This indenture, made this first day of March, in the year of our Lord one thousand nine hundred and nineteen (A. D. 1919), by and between Adolphus C. Bartlett, of the city of Chicago, county of Cook, and State of Illinois, the party of the first part, and the Northern Trust Company (hereinafter termed the "trustee"), of Chicago, a corporation organized and doing business under the laws of the State of Illinois, the party of the second part, witnesseth:

Article First

That the party of the first part, being desirous of establishing and creating the trust hereinafter mentioned, for the purposes and upon the terms set forth, in consideration of the premises and influenced by love and affection for the beneficiaries hereinafter named, does hereby sell, assign, transfer, and set over unto the trustee the following securities, to wit:

1,000 shares of the stock of the Northern Trust Company.
784 shares of the stock of the Commonwealth Edison Company.
300 shares of the stock of the Illinois Central Railroad Company.
300 shares of the common stock of the Chicago & Northwestern Railroad Company.
200 shares of the preferred stock of the Chicago & Northwestern Railroad Company.
100 shares of the stock of the Pullman Company.
5 bonds of Armour & Company, for $1,000 each.
15 bonds of Morris & Company, for $1,000 each.

Also the following-described notes secured by mortgage on real estate in Phoenix, Arizona:

Maker	Amount
Rollin S. Howard	5,000 00
W. S. Herman	5,000 00
Edgar O. Fawcett	22,500 00
Elisha T. Waters	5,000 00
Roy S. Goodrich	40,000 00
Wilson W. Dobson	7,000 00
Rodwell Music Company	20,000 00
Pauline M. O'Neil	25,000 00
Pauline M. O'Neil	5,000 00

to be held and disposed of under and in pursuance of this indenture.

Article Second

The trustee shall have power and authority at any time, and from time to time—

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds, and obligations at any time held by it hereunder, and also all rents and other income which shall accrue or become due and payable on or from any of the trust estate hereunder.

(2) To sell, transfer, assign, and convey any or all of the stocks, bonds, obligations, securities, real estate, or other property held at any time by said trustee under this instrument, and to invest and reinvest the proceeds thereof in either real or personal property, including dividend-paying stocks of corporations; provided, however, that during the life of said party of the first part said trustee shall be governed by any instructions or directions in writing given to it by said party of the first part in regard to the management, sale, or investment of any part of the said trust estate, and said trustee shall be free from any liability or responsibility for any action by it done under or in pursuance of any such written direction or instruction. In no event shall any purchaser from the trustee, or any person or corporation dealing with the trustee, be required to ascertain the authority and power of the trustee to make any sale, conveyance, or transfer of any part of the trust estate held hereunder, but every such purchaser and all other parties shall be entitled to rely upon the delivery of the transfer, assignment, or conveyance by the trustee of any or all of said trust estate as having been in all respects fully authorized, and shall not be affected by any notice to the contrary, or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the trustee hereunder, and to exercise every power, election, and discretion, give every notice, make every demand, and do every act and thing in respect of any shares of stock or bonds, or other obligations and securities held by the trustee hereunder, which it might or could do if it were the absolute owner thereof; provided, however, that upon the written request of said first party it shall be the duty of the trustee to execute, or cause to be executed, to the person or persons named in such requests a proxy, entitling him or them (with full power of substitution) to vote in respect of any shares of stock in such written request or proxy defined and mentioned, at any meeting or meetings of the stockholders of any corporation or corporations specified in such request and proxy.

(4) To receive any and all stock dividends declared, and any other distribution which may be made by any corporation, any of whose shares of stock at the time constitute a part of the principal of the trust estate, and also all proceeds which may be paid on or in respect

of any such shares of stock on the liquidation of the company issuing the same, or upon the sale (whether voluntary or involuntary) of its assets, or any part thereof, or which may be otherwise paid out of capital or on account of the principal of any bond, stock, or other security; and may in its discretion join in any plan of reorganization or of readjustment of any corporation, any of whose shares of stock, bonds, or other securities or obligations may at any time
9 constitute a part of the principal of the trust estate, and accept the substituted securities in and by said plan allotted in respect to the securities and obligations so held by the trustee.

(5) To execute leases of any real estate which shall form a part of the said trust at any time, at such rental, and upon such terms, and for such length of time (not exceeding two hundred (200) years) as it may deem best; to erect buildings, or to change, alter, or make additions to any existing buildings upon any real estate which may form a part of said trust estate; and to do all other acts in relation to the said real estate which in the judgment of said trustee shall be needful or desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; provided, however, that in every case the said trustee shall observe and be governed by any instructions or requests in relation thereto made by an instrument in writing, signed by said first party.

Article Third—Distribution and application of income

(1) During the joint lives of the said party of the first part and his wife, Abby H. Bartlett, the said trustee shall pay to the said Abby H. Bartlett the sum of two thousand dollars ($2,000.00) on the last day of each month, and the residue of said net income shall be accumulated in the hands of the said trustee and kept invested in the same manner as said trustee is authorized to invest the principal of said trust.

The said payments to the said Abby H. Bartlett are in lieu of the monthly payments now being made to her under an existing agreements, and not in addition thereto.

(2) From and after the death of the said party of the first part, the said payment of two thousand dollars ($2,000.00) in each month shall continue to be made to the said Abby H. Bartlett, until she shall either die or become entitled to a share of said first party's estate otherwise than under his will, bearing even date herewith; and the residue of said net income shall in each year be paid by said trustee to the four (4) children of said party of the first part, viz, Maie Bartlett Heard, Frederic Clay Bartlett, Florence Dibell Bartlett, and Eleanor Bartlett Perdue, or the survivors of them, in equal shares; provided, however, that in the event of the death of either of said children of said party of the first part leaving
10 issue surviving, such surviving issue shall stand in the place of such deceased child and receive the share of said net income which such deceased child would have received if living; it

being the intention of said party of the first part that all payments to his wife, Abbey H. Bartlett, under this trust shall cease and be at an end upon her becoming entitled to any share or portion of his estate otherwise than under his will, bearing even date herewith, and that, subject to the payments hereinbefore directed to be made to said Abby H. Bartlett, the net income of said trust estate shall be paid to the children of said party of the first part (and the issue of any deceased child) in the shares above specified during the continuance of the trust hereby created.

Article Fourth—Distribution of principal of trust estate

The trust hereby created shall terminate at the expiration of five (5) years from the death of the party of the first part unless the said Abby H. Bartlett shall then be living and be entitled to receive monthly payments out of the net income of said trust estate under the provisions of this indenture, in which case this trust shall continue until the death of said Abby H. Bartlett, and shall then terminate.

Upon the termination or expiration of the trust hereby created, the trust estate then in the hands of said trustee shall be paid over and distributed as follows:

(a) One-fourth (1/4) thereof to each of the four (4) children of said party of the first part hereinbefore named, viz, Mabe Bartlett Heard, Frederic Clay Bartlett, Florence Dibell Bartlett, and Eleanor Bartlett Perdue;

(b) If either of said four (4) children shall not then be living, his or her one-fourth (1/4) of said trust estate shall be paid over and distributed to the then surviving issue of such deceased child per stirpes; and in default of such surviving issue, then to the surviving issue of said party of the first part per stirpes.

Article Fifth—Concerning the trustee

The trustee hereby accepts the trust created by this indenture, and agrees to act in accordance with its terms and provisions.

11 The trustee may consult with counsel and shall be fully protected in any action or nonaction taken, permitted or suffered by it in good faith and in accordance with the opinion of counsel selected or provided by it; and in case of legal proceedings involving the trustee or the principal of the trust estate, the trustee may defend such proceedings or may, upon being advised by such counsel that such action is necessary or advisable for the protection of the interests of the trustee, or of the beneficiaries, institute any legal proceedings.

The trustee shall be reimbursed and indemnified against any and all liability, loss, or expense because of the holding of any shares of stock or other properties constituting a part of the principal of the trust estate, either in its own name or in the name of a nominee, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss, or expense which may

be so incurred by it, including the expense of defending any action or proceeding instituted against it or such nominee by reason of any such holding.

Out of the income of the principal of the trust estate the trustee shall pay all taxes, assessments, or other governmental charges which it may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the trustee therein, or the interest of any beneficiary or other person therein, under any present or future law of the United States, or of any State, county, municipality, or other taxing authority therein, any and all such taxes, assessments, or other governmental charges lawfully imposed being charged as a lien upon the said income, and in case of deficiency of said income upon the principal of the trust estate.

All payments or distribution of income to beneficiaries in this indenture provided for shall be made out of net income, current or accumulated, then in the hands of the trustee.

The said trustee, or any successor in trust, may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to either one of the beneficiaries hereinbefore named.

In case of the resignation of any trustee acting hereunder, or of its disability or incapacity to further act as trustee, the said party of the first part, if living, and after his death a majority of the five (5) beneficiaries hereinbefore named, viz, the wife and four
12 (4) children of said party of the first part, or a majority of the survivors of them, shall have power to appoint a successor in trust by an instrument in writing duly signed by him or them and delivered to said trustee, and upon the appointment of such successor in trust the said trustee shall convey, assign, transfer, and deliver to such successor in trust all of the trust estate then in its hands, and thereupon and thereafter such successor in trust shall have all the rights, powers, duties, and authority which are granted to or imposed on said original trustee under the provisions of this indenture.

Article Sixth—Miscellaneous provisions

(1) Said grantor has created the foregoing trusts to provide for the support and maintenance of the beneficiaries entitled to share in the income of said trust estate, and the said beneficiaries shall have no power to anticipate, assign, or otherwise dispose of or encumber their respective interests in said trust estate, and the same shall not be subject to be taken from them by process of law.

(2) Any of the provisions of this trust deed may be altered, changed, or modified in any respect and to any extent at any time during the life of said party of the first part by the delivery to said trustee of an instrument in writing signed by said party of the first part and by a majority of the five (5) beneficiaries hereinbefore named, or by a majority of the survivors of said five beneficiaries.

(3) The beneficiaries, or any or either of them, may act through an attorney in fact in signing any and all instruments delivered to the trustee under this indenture, with like effect as though signed in person, and any or either of said beneficiaries may act as such attorney in fact when authorized so to do.

In witness whereof the parties hereto have executed this instrument, under seal, the day and year first above written.

ADOLPHUS C. BARTLETT. [SEAL.]
THE NORTHERN TRUST COMPANY,
By SOLOMON A. SMITH, *President.*

Attest:
H. H. ROCKWELL,
Assistant Secretary.

13. That at the time of the execution and delivery of the said
13 indenture of trust, and the property therein listed, the said Adolphus C. Bartlett was in good health, and suffering from no physical disability, and the said conveyance and transfer and trust indenture was not made by the said Adolphus C. Bartlett in contemplation of his death.

14. That the said trust indenture and conveyance aforesaid was not, by the terms of the said trust indenture, or in fact, intended by the said Adolphus C. Bartlett, to take effect in possession or enjoyment at or after his death. But the said conveyance was intended to, and did in fact, take effect in possession and enjoyment, and vest immediately upon the date of the said instrument.

15. That the said grantor reserved to himself no beneficial interest in the property conveyed by the said instrument.

16. That the said grantor did not, during his lifetime, and subsequent to the execution and delivery of the said trust indenture on the date it bears, exercise any dominion, power or control over the property conveyed by the said trust indenture as aforesaid.

17. That the plaintiff in filing its said estate-tax return, as aforesaid, did not include in its computation of the gross value of the said estate the value of any of the properties conveyed as aforesaid to the Northern Trust Company as trustee under the said indenture above set out; but did, however, in the said return make a full and complete disclosure of the facts surrounding the said transfer as evidenced by the said indenture of trust, and accompanied its return by its statement in writing explaining its reasons for not including the value of the property so conveyed in the gross estate of the said decedent, to wit, that the said transfer was not made by the decedent in contemplation of or intended to take effect in possession or enjoyment at or after his death.

18. That thereafter the Commissioner of Internal Revenue conducted an investigation of the said return of the plaintiff as said executor, of the value of the net estate of Adolphus C. Bartlett, deceased, and the value of the properties conveyed as aforesaid, covered by the said trust indenture above referred to, and bearing date

the 1st day of March, 1919, and fixed and determined the value of the properties so conveyed by the said trust indenture in the sum of $718,112.29, included the same in the computation of the gross estate of the decedent, and thereby, by a like amount, increased the value of the net estate of the said Adolphus C. Bartlett, deceased, for the purpose of the assessment of the so-called estate tax.

14 19. That thereupon the said Commissioner of Internal Revenue, on or about the 1st day of May, 1924, did assess an additional tax, computed on the inclusion in the gross estate of the decedent of the above mentioned value of the properties above referred to, and also the value of certain other properties elsewhere referred to; which additional tax as assessed on all such properties amounted to the sum of $314,993.93, of which total amount the sum of $129,260.21 represented the additional tax assessed as the result of the inclusion in the gross estate of the decedent of the properties referred to and conveyed by the said trust indenture.

20. And the said Commissioner of Internal Revenue did, on or about the 12th day of May, 1924, by a letter bearing date May 1, 1924, demand of the plaintiff as executor of the estate of Adolphus C. Bartlett, deceased, that it pay the said additional tax of $314,993.93.

21. The said notice of the said Commissioner of Internal Revenue, concerning the said additional assessment and demand for payment, was in words and figures as follows:

MAY 1, 1924.

ET—MT—3481—LO.
District of First Illinois.
Estate of Adolphus C. Bartlett.
Tax liability, $314,993.93.

The NORTHERN TRUST COMPANY,
Executor, Estate of Adolphus C. Bartlett,
Care of Collector,
Chicago, Illinois.

SIRS: A review and audit of the return on Form 706 filed for this estate and of the report of investigation discloses a total tax liability of $540,400.94. The return shows a tax liability of $225,407.01, which has been paid. The amount due is $314,993.93, which should be paid to the collector of internal revenue at Chicago, Illinois, without delay, as section 407 of the revenue act provides that the excess part of the tax shall bear interest at the rate of ten per centum per annum from the expiration of one month after the date of the receipt of this letter until payment is received by the collector.

On the second sheet of this communication is a complete summary of the returned and determined values placed upon the property and also the claimed and allowed deductions. Following the summary is an explanation of the changes made.

2—Estate of Adolphus C. Bartlett.
Date of death, May 30, 1922.

15 *Summary*

	Returned (706)	Determined on review
Gross estate		
Real estate	$319,841.01	$319,841.01
Stocks and bonds	1,942,991.82	2,021,272.18
Mortgages, notes, cash, and insurance	281,971.00	290,363.32
Other miscellaneous property	33,656.01	37,656.01
Transfers	148,294.02	2,059,735.26
Powers of appointment		
Property identified or taxed within five years		
Total gross estate	2,726,254.26	4,729,908.78
Deductions		
Funeral expenses	1,308.00	1,308.00
Administration expenses		
Executor's fee	42,000.00	42,000.00
Attorney's fee	28,000.00	28,000.00
Miscellaneous	10,147.74	10,147.74
Debts of decedent	25,915.19	25,915.19
Unpaid mortgages		
Net losses during settlement		
Support of dependents	50,000.00	50,000.00
Property identified or taxed within five years		
Charitable, public, and similar bequests	62,000.00	62,000.00
Specific exemption (resident decedents only)	50,000.00	50,000.00
Total	270,409.93	270,409.93
Net estate for tax	2,455,744.33	4,459,338.85
Total tax	297,687.01	540,605.00
Additional tax due		319,066.82

3—Estate of Adolphus C. Bartlett.

The changes indicated below show the specific adjustments, as determined by this bureau, in accordance with the estate tax law.

16	Returned	Determined
GROSS ESTATE		
Stocks and bonds		
1,200 shares Allied Paper Mills preferred	$81,250.00	$81,943.75
1,440 shares Allied Paper Mills, common	1,440.00	12,825.00
50 shares Arizona Publishing Company	5,000.00	7,500.00
1,000 shares Bartlett Heard Land and Cattle Co.	275,000.00	330,000.00
200 shares Cananea and Arizona Mining Company	12,500.00	12,500.00
100 shares Chicago and Northwestern Railway Co.	7,000.00	7,125.00
1,920 shares Elgin National Watch Company	74,880.00	79,968.00
375 shares First National Bank of Chicago, Ill.	150,000.00	150,000.00
2,450 shares Hibbard, Spencer, Bartlett and Company	408,900.00	511,434.00
200 shares Illinois Central Railroad Company	21,200.00	21,350.00
931 shares International Harvester Company	86,940.00	86,709.00
2,450 shares Standard Paper Company, common	78,960.00	63,278.00
50 shares Chicago Auditorium Association	0.00	250.00
$85,000 U. S. first Liberty loan, 3½%	84,943.00	84,981.00
4—Estate of Adolphus C. Bartlett		
Stocks and bonds—Continued		
$40,000 U. S. second Liberty loan 4¼%	39,944.00	39,968.00
$15,000 U. S. fourth Liberty loan 4¼%	14,971.00	14,982.00
$3,000 U. S. four & 1 Liberty loan 4¼%	2,970.00	2,988.00
$4,000 U. S. fourth Liberty loan 4¼%	99.00	99.00
$5,000 U. S. victory loan 4¾%	15,000.00	15,000.00
$1,000 war saving certificates	975.00	975.00
17 Mortgages, notes, cash, and insurance		
Loan [illegible] upon promissory note, in the state of Illinois	0.00	1,000.00
Policy No. 60000, Mutual Benefit Life Insurance Company	0.00	1,000.00
Accumulated dividends	2,971.00	4,392.00
Other miscellaneous property. Furniture loaned to Art Institute	0.00	4,000.00
Transfers. The value of the following described property transferred by decedent in his lifetime or intended to be given effect to during [illegible] deceased after consideration of all the facts that such transfers are taxable under the provisions of the Federal estate-tax law		

	Returned	Determined
GROSS ESTATE—continued		
5—Estate of Adolphus C. Bartlett		
Transfers—Continued		
Items under trust agreement No. 4479—		
Item 1—200 shares Chicago and Northwestern Railway Co	$0.00	$15,250.00
Item 8—$7,100 U. S. third Liberty loan bonds	0.00	7,092.90
Item 9—$17,000 U. S. Liberty loan bonds, 4¼%	0.00	16,994.90
Item 10—4,000 U. S. Victory loan 3¾%	0.00	4,024.80
Sum of items unchanged as disclosed in the return under trust agreement No. 4479	0.00	259,129.83
Items under trust agreement No. 4478—		
Item 34—300 shares Chicago and Northwestern Railway Co., common	0.00	22,875.00
18 Item 36—$8,000 city of Chicago 4%	0.00	7,824.00
Sum of items unchanged as disclosed in the return under trust agreement No. 4478	0.00	263,036.32
Items under trust agreement No. 4477—		
Item 45—300 shares Chicago and Northwestern Railway Co., common	0.00	22,875.00
Sum of items unchanged as disclosed in the return under trust agreement No. 4477	0.00	664,938.90
Surplus income over and above annuity of $24,000 to decedent's wife	0.00	30,298.39
6—Estate of Adolphus C. Bartlett		
Transfers—Continued		
Sum of items unchanged as disclosed in the return under trust agreement No. 4480	0.00	249,731.29
Sum of items unchanged as disclosed in the return under trust agreement No. 4481	0.00	207,350.04
Difference between net estate, returned and determined, to balance	1,982,574.23	

In determining the tax liability of the estate, due consideration has been given the briefs and papers submitted by the attorneys for the estate with their letter of April 23, 1924.

This letter shows the bureau's determination of the estate tax liability of this estate, and assessment will be made on this basis. All questions relating to the discharge of this tax should be taken up direct with the collector and not with this office.

Respectfully,

(Signed) R. M. ESTES,
Deputy Commissioner.

BGC.

19 22. That thereafter on, to wit, the 28th day of May, 1924, the plaintiff paid to the defendant the sum of $45,398, and on, to wit, the 10th day of June, 1924, the plaintiff paid to the defendant the sum of $269,595.93, the total of which payments amounted to the sum of $314,993.93, and both of which payments were made because of the additional assessment above referred to, and solely to avoid the imposition of interest and penalties visited for failure to pay said tax, and to avoid prosecution and distraint in the sale of the property of the said estate, and under compusion, duress, and coercion. That the said payments were made under protest in writing, by the plaintiff, that no tax was due from it based on the inclusion within the estate of the value of said property conveyed as aforesaid, and that the defendant was without authority to exact the same.

23. That in the aforementioned total payment of $314,993.93, made under protest by the plaintiff to the defendant, there was included in the above-mentioned sum assessed by reason of the inclusion in the

gross estate of the decedent of the properties, or sums above referred to.

24. That thereafter, to wit, on the 30th day of July, 1924, in accordance with, and in the manner and form as provided in section 3226 of the Revised Statutes of the United States, the provisions of the law in that regard, and the regulations of the Secretary of the Treasury, and of the Commissioner of Internal Revenue established in pursuance of said law, the plaintiff filed with the defendant herein and with the said Commissioner of Internal Revenue its claim for a refund of the said tax illegally assessed and paid, in the amount of $353,335.80, in which sum was included the tax which had been paid on the basis of the inclusion in the estate of the decedent of the properties conveyed by the aforementioned transfer or trust indenture.

Which said claim for refund was in words and figures as follows:

29 CLAIM FOR

Abatement of tax assessed
Credit against outstanding assessments
Refund of taxes illegally collected
Refund of amounts paid for stamps used in error or excess

STATE OF ILLINOIS,
County of Cook, ss:

The Northern Trust Company, executor of the estate of Adolphus C. Bartlett, deceased, LaSalle & Monroe Streets, Chicago

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

(1) Business in which engaged: .....
(2) Character of assessment or tax: Federal estate tax.
(3) Amount of assessment or stamps purchased: $540,480.24.
(4) Reduction of tax liability requested (income and profits tax): $.....
(5) Amount to be abated: $.....
(6) Amount to be refunded (or such greater amount as is legally refundable): $353,335.80.
(7) Dates of payment (see collector's receipts or indorsements of canceled checks): May 29, 1923, May 29, 1924, and June 16, 1924.

(If statement covers income tax liability, items 8-11, inclusive, must be answered.)

(8) District in which return (if any) was filed: Chicago, Illinois

A Federal estate tax was, on May 29, 1923, paid in the above estate in the sum of $225,407.01. Said tax was erroneously computed and the correct tax on the amount of the net estate listed in the return

was $225,307.01. The sum of $100.00 was improperly paid and should be refunded. There was included in the gross estate listed in said return $122,000 of life insurance on the life of said decedent receivable by beneficiaries other than the executor. The taxpayer contends that the taxation of such life insurance is unconstitutional and that the tax resulting therefrom, which was included in the payment of May 29, 1923, should be refunded.

21 In accordance with the letter of the Commissioner of Internal Revenue dated May 1, 1924, and received by the taxpayer on May 12, 1924, an additional tax of $314,993.93 was assessed against the taxpayer. This assessment covered numerous changes in the assets listed in the return, but was mainly the result of a holding on the part of said commissioner that certain trusts created by said decedent during his lifetime for the benefit of the members of his family were taxable under the provisions of the Federal estate-tax law. Said taxpayer, on May 29, 1924, paid $45,398.00 in part payment of said additional tax, and on June 10, 1924, paid $269,595.93, being the full balance thereof. Said taxpayer contends that each and every change in valuations is unwarranted, and further that the inclusion in the gross estate of the property transferred in trust as aforesaid is improper, unconstitutional and entirely without warrant in law, and that the tax resulting therefrom should be refunded.

There was also included, in accordance with the regulations then in force, in the gross estate in the return filed by the taxpayer, the value of certain property transferred in trust for the benefit of decedent's daughter, Eleanor B. Perdue. This trust, numbered by the Northern Trust Company, trustee, 3048, was created by decedent on December 30, 1910. There was also included in said gross estate the value of certain property transferred in trust for the benefit of decedent's daughter, Florence D. Bartlett. This trust, numbered by the Northern Trust Company, trustee, 1831, was created by decedent on February 11, 1903.

The taxpayer contends that the inclusion of the property transferred in the trusts in the gross estate is improper, unconstitutional and entirely without warrant in law, and that the tax resulting from such inclusion, which has been paid as heretofore set out, should be refunded.

Through an oversight, only one installment of the income tax chargeable against the taxpayer for the period from January 1, 1922, to May 30, 1922, was claimed as a deduction. The remaining three installments totalling $2,862.25 were proper deductions and are now claimed as such and the tax paid through the failure to include said deductions should be refunded.

Taxpayer requests a hearing before the committee on appeals and review.

(Attach additional sheets if necessary.)

22 Sworn to and subscribed before me this 30th day of July, 1924.

(Sgd.) F. G. GRADY,
Notary Public.

(Signed) NORTHERN TRUST CO.,
Executor of the Estate of Adolphus C. Bartlett, deceased.
By A. B. CASWELL.

(This affidavit may be sworn to before a deputy collector of internal revenue or revenue agent without charge.)

25. That on, to wit, the 5th day of March, 1925, the said Commissioner of Internal Revenue rejected and denied said claim for refund with the exception of certain minor assessments which, it was admitted had been improperly made against the taxpayer; that is to say, to wit, he admitted that there had been improperly included in the gross estate an item of $30,208.39, and that in addition there should be allowed a deduction amounting to $2,862.25, which said amounts, when properly credited, reduced the said tax by the sum of $5,968.91. The claim for refund, so far as the said last sum was concerned, was allowed and certified; the balance of the claim for refund was denied and rejected. The said allowance and said denial and rejection, as aforesaid, were in words and figures as follows:

MARCH 5, 1925.

MT—ET—Cl. R—3418—PEM
District of First Illinois.
Estate of Adolphus C. Bartlett.
Date of death, May 30, 1922.
The NORTHERN TRUST COMPANY,
Executor, Estate of Adolphus C. Bartlett,
50 South LaSalle Street,
Chicago, Illinois.

SIRS:

The bureau has examined the claim filed by you, as executor of the above-named estate, for refund of $353,535.90 of the Federal estate tax paid under the revenue act of 1921.

A conference was held in the office of the Deputy Commissioner of Internal Revenue, estate-tax division, on October 14, 1924, at which the estate was represented by J. F. Dammann, junior, and Stuart J. Templeton. The matter considered at this conference relates
23 to the taxability of the trust referred to in the estate's brief as Mrs. Bartlett's trust and the children's trust. The trust for Mrs. Bartlett provided in effect that it should terminate not earlier than five years after decedent's death. The children's trusts provided that they should terminate five years after decedent's death. By the express provisions of the five trusts they could not terminate until a time after the decedent's death. After careful consideration of all the evidence on file the bureau is of the opinion that its former

action in including these transfers in the decedent's gross estate should be adhered to.

It is contended by the estate that the items set out in bureau letter of May 1, 1924, and described as "surplus income over and above annuity of $24,000 to decedent's wife" and included in the decedent's estate at $30,298.39 was included in the amounts totaling the sum of $687,813.90. Evidence has been presented by the estate which fully supports its contention. Therefore the sum of $30,298.39 is excluded from the decedent's gross estate, resulting in the following adjustment:

Transfers	Returned	Adjusted
Surplus income over and above annuity of $24,000 to decedent's wife	$0.00	$0.00
Additional income tax paid for period from January 1, 1922, to May 30, 1922	.00	2,862.25

It appears from the statement of the executor that there were additional income taxes due for the period prior to the decedent's death which had not been heretofore allowed as a deduction. This item represents a proper item of deduction and therefore adjustment is made as shown above.

Part of your protest is directed against the inclusion in the decedent's gross estate of life insurance payable to named beneficiaries other than the estate, it being stated in your claim that the taxation of such life insurance is unconstitutional.

You are advised that, in view of the express provisions of the revenue act of 1921 and the fact that the Government has appealed from the decision in a recent case involving the same question, the bureau is of the opinion that the insurance was properly included in the gross estate.

In the review of May 1, 1924, the gross estate was determined to be $4,708,808.49, the deductions $270,469.92, and the net estate $4,438,-
338.57. The reduction made in connection with the items pro-
24 tested and affecting the value of the gross estate amounts to $30,298.39, making the corrected total thereof $4,678,510.10. The increase in the deductions amounts to $2,862.25, making the corrected total thereof $273,332.17. The resultant net estate is accordingly now determined to be $4,405,177.93, the tax upon the transfer of which is $534,432.03. As a tax of $540,400.94 has been paid by the estate, an excess payment has been made in the sum of $5,968.91.

In view of the foregoing, your claim for $353,335.90 will be certified to the disbursing clerk of the Treasury Department for payment in the sum of $5,968.91 and is rejected as to $347,366.99.

Respectfully,

(Signed) D. H. Blair,
Commissioner.

ACS

26. That the said estate tax law, being a part of the said revenue act of 1921, approved and in force the 23d of November, 1921, in so far as it purports in the paragraph above quoted (section 402, subsection (c)) to require that there be included in the gross estate of the decedent for the purposes of taxation the property transferred by a transfer or trust made or created before the passage of the said revenue act is unconstitutional and void in that it takes away the property of the plaintiff without due process of law, in violation of the fifth amendment of the Constitution of the United States, and does not provide a transfer tax or an indirect tax but provides a direct or capitation tax not laid in proportion to the census enumeration and in violation of Article 1, section 9, subsection 4, of the Constitution of the United States.

27. That if the said estate tax law is so construed as to impose a tax on the transfer made by the indenture of trust above referred to, then the said estate tax law as so construed is unconstitutional and void in that it takes away the property of the plaintiff without due process of law, in violation of the fifth amendment of the Constitution of the United States, and does not provide, as its purports, a transfer tax or an indirect tax, but is a direct or capitation tax in violation of Article 1, section 9, subsection 4, of the Constitution of the United States, and not laid in proportion to the census or enumeration, as therein provided.

25 28. That the said estate tax law was not in force and effect at the time the said transfer, evidenced by the said indenture or trust, was made.

29. That the said indenture of trust transferred a vested interest in the properties covered by said trust indenture and was a completed transaction at the time the said transfer was made, to wit, on the date it bears.

30. That ever if the said estate tax provisions of the said revenue act of 1921 be found to be constitutional, no part of the property passing to the Northern Trust Company as trustee under the said trust indenture is or ought to be considered as a portion of the estate of the deceased grantor, Adolphus C. Bartlett, and taxable within the terms of the said act.

31. That the said transfer was not a transfer made in contemplation of death of the grantor, or a transfer to take effect in possession or enjoyment at or after his death, and therefore the said property transferred by said trust indenture should not have been included in the gross estate of the decedent in computing the said tax.

32. That the said estate tax law aforesaid did not authorize the assessment and collection of the additional tax above referred to of $314,993.93, assessed and collected as aforesaid, in so far as said additional tax was computed by an inclusion in the estate of the said decedent of the said property passing by virtue of the said trust indenture; and the said additional tax assessed and collected as aforesaid, after giving credit for the refund as allowed above, referred to, of $5,968.91, and in so far as the said additional tax represents a

tax on the property passing by virtue of the said trust indenture, was wrongfully collected, and should be repaid to the plaintiff, with interest.

By reason whereof the said defendant became liable, and is bound by law, to refund and pay to the plaintiff the amount so paid, $129,260.21, with interest thereon, according to the statute made and provided.

SECOND COUNT

For that whereas the plaintiff alleges:

1. That it adopts, for the purposes of this count in this declaration, the following numbered paragraphs as found in the first count hereof, with like effect as though they were set up in full herein, that
26 is to say, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration.

12. The said Adolphus C. Bartlett during his lifetime, and in and by a certain indenture of trust bearing date the 1st day of March, 1919, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of Cook, and State of Illinois, as trustee, certain properties more specifically described in the said instrument, which said indenture of trust, for the purposes of identification, bears the number of the Northern Trust Company, No. 4478.

That on, to wit, the 28th day of June, 1921, by an instrument in writing, the said trust indenture was, in accordance with the powers therein contained, amended in certain particulars, which will more specifically appear from the said instrument of amendment. And the said trust indenture and the amendment thereto above spoken of were in words and figures as follows:

This indenture, made this first day of March, in the year of our Lord one thousand nine hundred and nineteen (A. D. 1919), by and between Adolphus C. Bartlett, of the city of Chicago, county of Cook, and State of Illinois, the party of the first part, and the Northern Trust Company, of Chicago (hereinafter termed the "trustee"), a corporation organized and doing business under the laws of the State of Illinois, the party of the second part, witnesseth:

Article First

The party of the first part, being desirous of establishing and creating the trust hereinafter mentioned, for the purposes and upon the terms set forth, in consideration of the premises and influenced by love and affection for the beneficiary hereinafter named, does hereby sell, assign, transfer and set over unto the trustee the following securities, to wit:

300 shares of the stock of the First National Bank of Chicago;
200 shares of the stock of the Elgin National Watch Company;
200 shares of the stock of the Commonwealth Edison Company;
27 100 shares of the stock of the Illinois Central Railroad Company;
300 shares of the common stock of the Chicago & Northwestern Railway Company;
19 bonds of P. F. Pettibone & Company, of the par value of $1,000 each;
6 bonds of the sanitary district of Chicago, of the par value of $1,000 each;
5 bonds of Armour & Company, of the par value of $1,000 each; to be held and disposed of under and in pursuance of the terms of this indenture.

Article Second

The trustee shall have power and authority at any time, and from time to time—

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds or obligations at any time held by it hereunder, and also all rents and other income which shall accrue or become due and payable on or from any of the trust estate hereunder.

(2) To sell, transfer, assign and convey any or all of the stocks, bonds, obligations, securities, real estate or other property held at any time by said trustee under this instrument, and to invest and reinvest the proceeds thereof in either real or personal property, including dividend-paying stocks of corporations; provided, however, that during the life of said party of the first part said trustee shall be governed by any instructions or directions given to it in writing by said party of the first part in regard to the management, sale or investment of any part of the said trust estate, and said trustee shall be free from any liability or responsibility for any action by it done under or in pursuance of any such written directions or instructions. In no event shall any purchaser from the trustee, or any person or corporation dealing with the trustee, be required to ascertain the authority and power of the trustee to make any sale, conveyance or transfer of any part of the trust estate held hereunder, but every such purchaser and all other parties shall be entitled to rely upon the delivery of the transfer, assignment or conveyance by the trustee of any or all of said trust estate as having been in all respects
28 fully authorized, and shall not be affected by any notice to the contrary, or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the trustee hereunder, and to exercise every power, election and discretion, give every notice, make every demand, and do every act

and thing in respect of any shares of stock or bonds or other obligations and securities held by the trustee hereunder, which it might or could do if it were the absolute owner thereof; provided, however, that upon the written request of said first party it shall be the duty of the trustee to execute, or cause to be executed, to the person or persons named in such request a proxy, entitling him or them (with full power of substitution) to vote in respect of any shares of stock in such written request or proxy defined and mentioned, at any meeting or meetings of the stockholders of any corporation or corporations specified in such request and proxy.

(4) To receive any and all stock dividends declared, and any other distribution which may be made by any corporation, any of whose shares of stock at the time constitute a part of the principal of the trust estate, and also all proceeds which may be paid on or in respect of any such shares of stock on the liquidation of the company issuing the same, or upon the sale (whether voluntary or involuntary) of its assets, or any part thereof, or which may be otherwise paid out of capital or on account of the principal of any bond, stock or other security; and may in its discretion join in any plan of reorganization or of readjustment of any corporation, any of whose shares of stock, bonds or other securities or obligations may at any time constitute a part of the principal of the trust estate, and accept the substituted securities in and by said plan allotted in respect of the securities and obligations so held by the trustee.

(5) To execute leases of any real estate which shall form a part of the said trust at any time, at such rental, and upon such terms, and for such length of time (not exceeding two hundred (200) years) as it may deem best; to erect buildings, or to change, alter or make additions to any existing buildings upon any real estate which may form a part of said trust estate; and to do all other acts in relation to the said real estate which in the judgment of said trustee shall be needful or desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; provided, however, that in every case the said trustee shall observe and be governed by any instructions or request in relation thereto made by an instrument in writing, signed by said first party.

Article Third—Distributon and application of income

The term "net income" as used in this indenture shall be held to mean and include all sums received by the trustee by way of dividends, interest or rents from the trust estate or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income as and when received by the trustee shall be applied and disposed of by the trustee as follows:

(1) During the lifetime of said party of the first part said net income shall be accumulated and added to the principal of said trust

estate; provided, however, that such payments out of said net income as may be approved or directed in writing by the said party of the first part shall be made from time to time to the son of said party of the first part, Frederic Clay Bartlett, or to the guardian of his surviving issue in the event of his death during the life of said party of the first part.

(2) From the death of said party of the first part the net income of said trust estate shall be paid over to the said Frederic Clay Bartlett, the son of said party of the first part, for and during his life, or until the termination of the trust, as hereinafter provided.

Article Fourth—Distribution of principal of trust estate

The trust hereby created shall terminate at the expiration of five (5) years from the death of the said party of the first part; provided, however, that if the said Frederic Clay Bartlett shall die prior to the expiration of said five (5) years, then and in that case said trust shall terminate at the death of the survivor of the said party of the first part and the said Frederic Clay Bartlett. And upon the termination of said trust the said trust estate shall be paid over to Frederic Clay Bartlett if he shall be then living, and if he shall not be then living said trust estate shall be held, distributed or disposed of in accordance with the provisions of the last will and testament of said Frederic Clay Bartlett. And in case said Frederic Clay Bartlett shall not dispose of said trust estate by his last will and testament, then said trust estate shall be distributed and paid over to the surviving issue of said Frederic Clay Bartlett per stirpes; and in default of such surviving issue then the same shall be distributed and paid over to the surviving issue of said party of the first part per stirpes.

Article Fifth—Concerning the trustee

The trustee hereby accepts the trust created by this indenture and agrees to act in accordance with its terms and provisions.

The trustee may consult with counsel and shall be fully protected in any action or nonaction taken, permitted, or suffered by it in good faith and in accordance with the opinion of counsel selected or provided by it; and in case of legal proceedings involving the trustee or the trust estate the trustee may defend such proceedings and may, upon being advised by counsel that such action is necessary or advisable for the protection of the interests of the trustee, or of the beneficiaries, institute any legal proceedings.

The trustee shall be reimbursed and indemnified against any and all liability, loss, or expense because of the holding of any shares of stock or other properties constituting a part of the principal of the trust estate, either in its own name or in the name of a nominee, and shall have a lien upon the principal of the trust estate and the

income therefrom for the amount of any liability, loss or expense which may be so incurred by it, including the expense of defending any action or proceeding instituted against it or such nominee by reason of any such holding.

Out of the income of the principal of the trust estate the trustee shall pay all taxes, assessments or other governmental charges which it may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the trustee therein or the interest of any bene-
31 ficiary or other person therein, under any present or future law or the United States, or of any State, county, municipality, or other taxing authority therein, any and all such taxes, assessments or other governmental charges lawfully imposed being charged as a lien upon the said income, and in case of deficiency of said income upon the principal of the trust estate.

The said trustee, or any successor in trust, may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to the beneficiary hereinbefore named.

In case of the resignation of any trustee acting hereunder, or of its disability or incapacity to further act as trustee, said party of the first part, if living, and after his death the said Frederic Clay Bartlett, shall have power to appoint a successor in trust by an instrument in writing, delivered to said trustee, and upon the appointment of such successor in trust the said trustee shall sell, convey, assign, and deliver to such successor in trust all of the trust estate then in its hands, and thereupon and thereafter such successor in trust shall have all the rights, powers, duties and authority which were granted to or imposed upon said original trustee under the provisions of this indenture.

Article Sixth—Miscellaneous provisions

(1) Said grantor has created the foregoing trust to provide for the support and maintenance of the beneficiaries entitled to share in the income of said trust estate, and the said beneficiaries shall have no power to anticipate, assign or otherwise dispose of or encumber their respective interests in said trust estate, and the same shall not be subject to be taken from them by process of law.

(2) Any of the provisions in this trust deed may be altered, changed or modified in any respect and to any extent, at any time, by an instrument in writing signed by the said party of the first part and by the said Frederic Clay Bartlett, and delivered to the trustee; and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights, and powers of all parties concerned, the same in all
32 respects as though such original indenture had been executed in such modified or altered form.

In witness whereof the parties hereto have executed this instrument under seal the day and year first above written.

ADOLPHUS C. BARTLETT. [SEAL.]
THE NORTHERN TRUST COMPANY,
By SOLOMON A. SMITH, *President.*

Attest:
[SEAL.] H. H. ROCKWELL,
Asst. Secretary.

AMENDMENT, JUNE 28, 1921

To the NORTHERN TRUST COMPANY,
of Chicago, as trustee.

You are hereby notified that we, the undersigned, Adolphus C. Bartlett and Frederick Clay Bartlett (the said Adolphus C. Bartlett being the grantor and party of the first part, said The Northern Trust Company as trustee being the grantee and party of the second part, and the said Frederick Clay Bartlett being the beneficiary, in a certain trust indenture dated the 1st day of March, 1919), do hereby, in pursuance of the power in us vested by the terms of said trust indenture, alter, change and modify the provisions of said trust indenture by striking out the whole of the third article of said trust indenture and inserting in lieu thereof, as a part of said trust indenture, the following:

"Article Third—Distribution and application of income

"The term 'net income' as used in this indenture shall be held to mean and include all sums received by the trustee by way of interest, dividends or rents from the trust estate, or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income, as and when received by the trustee, shall be applied and disposed of by the trustee as follows:

"The beneficiaries entitled to ask for and receive the said net income shall be Frederick Clay Bartlett during his life,
33 and in the event of his death, leaving issue him surviving, the guardian of such issue shall be entitled to receive said net income; and in default of any such surviving issue then from the date of such default the surviving issue of said party of the first part, per stirpes, shall be entitled to receive said net income. So much of the net income as the beneficiary or beneficiaries entitled thereto shall ask for during each year shall be paid over to him or them, and the remainder thereof not paid over to the beneficiary or beneficiaries in each calendar year shall be added to and become a part of the principal of said trust estate at the end of each calendar year."

In witness whereof we, the undersigned, have hereunto set our hands and seals this 28th day of June, A. D. 1921.

ADOLPHUS C. BARTLETT. [SEAL.]
FREDERIC CLAY BARTLETT. [SEAL.]

In presence of—
DOYLE E. HINTON.
ROBERT O. BURLEY.

STATE OF WISCONSIN,
County of Walworth, ss:

I, Annie F. Napper, a notary public in and for said county, in the State aforesaid, do hereby certify that Adolphus C. Bartlett, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, A. D. 1921.

ANNIE F. NAPPER,
Notary Public.

My commission expires April 27, 1924.

STATE OF WISCONSIN,
County of Walworth, ss:

I, Annie F. Napper, a notary public in and for said county, in the State aforesaid, do hereby certify that Frederic Clay Bartlett, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in
74 person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, A. D. 1921.

ANNIE F. NAPPER,
Notary Public.

My commission expires April 27, 1924.

13. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Numbers 13, 14, 15, 16, and 17, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations that the said transfer was not made in contemplation of the death of the grantor or to take effect in possession or enjoyment at or after his death; that the grantor retained no beneficial interest in the property so conveyed, and exercised no dominion or power over it, and that in filing its estate tax return the plaintiff did not include the said property in its computation of the gross value of the estate, but

did give in the said return the full information concerning the said transfer; all of which will more specifically appear by a reference to said paragraphs.

18. That thereafter the Commissioner of Internal Revenue conducted an investigation of the said return of the plaintiff as said executor of the value of the net estate of Adolphus C. Bartlett, deceased, and of the value of the properties conveyed by the said trust indenture above referred to, and fixed and determined the value of the said properties in the sum of $323,735.32, included the said value in the computation of the gross estate of the decedent, and thereby increased in a like amount the value of the net estate of the said Adolphus C. Bartlett, deceased, for the purpose of the assessment of the said estate tax.

19. That thereupon the said Commissioner of Internal Revenue, on or about the 1st day of May, 1924, did assess an additional tax, computed on the inclusion in the gross estate of the decedent of the above-mentioned value of the properties above referred to, and also the value of certain other properties elsewhere referred to; which additional tax as assessed on all such properties amounted to the sum of $314,983.95, of which total amount the sum of $58,272.36 represented the additional tax assessed as the result of the inclusion in the gross estate of the decedent of the properties referred to and conveyed by the said trust indenture.

20. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Numbers 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations concerning the notice, demand and payment of the said additional tax, the claim for refund, the denial of the Commissioner of Internal Revenue of the claim for refund, and the averments of the plaintiff that the said property should not be taxed, all of which will more specifically appear by reference to said paragraphs.

By reason whereof the said defendant became liable, and is bound by law, to refund and pay to the plaintiff the amount so paid of $58,272.36, with interest thereon according to statute made and provided.

Third Count

For that whereas the plaintiff alleges:

1. That it adopts, for the purposes of this count in this declaration, the following numbered paragraphs as found in the first count thereof, with like effect as though they were set up in full herein, that is to say, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration.

12. The said Adolphus C. Bartlett during his lifetime, and in and by a certain indenture of trust bearing date the 1st day of March, 1919, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of Cook, and State of Illinois, as trustee, certain properties more specifically described in the said instrument, which said indenture of trust, for the purposes of identification, bore the number of the Northern Trust Company, No. 4479.

That on, to wit, the 28th day of June, 1921, by an instrument
36 in writing, the said trust indenture was, in accordance with the powers therein contained, amended in certain particulars, which will more specifically appear from the said instrument of amendment. And the said trust indenture and the amendment thereto above spoken of were in words and figures as follows:

This indenture, made this first day of March in the year of our Lord one thousand nine hundred and nineteen (A. D. 1919), by and between Adolphus C. Bartlett, of the city of Chicago, county of Cook, and State of Illinois, the party of the first part, and the Northern Trust Company, of Chicago (hereinafter termed the trustee), a corporation organized and doing business under the laws of the State of Illinois, the party of the second part, witnesseth:

Article First

The party of the first part, being desirous of establishing and creating the trust hereinafter mentioned, for the purposes and upon the terms set forth, in consideration of the premises and influenced by love and affection for the beneficiary hereinafter named, does hereby sell, assign, transfer and set over unto the trustee the following securities, to wit:

300 shares of the stock of the First National Bank of Chicago;
200 shares of the stock of the Elgin National Watch Company;
200 shares of the stock of the Commonwealth Edison Company;
100 shares of the stock of the Illinois Central Railroad Company;
200 shares of the common stock of the Chicago & Northwestern Railway Company;
36 bonds of the Arizona Publishing Company, of the par value of $500 each;

to be held and disposed of under and in pursuance of the terms of this indenture.

37 Article Second

The trustee shall have power and authority at any time, and from time to time—

1. To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds, or obligations at any time held by it hereunder, and also all rents and other income which shall accrue or become due and payable on or from any of the trust estate hereunder.

(2) To sell, transfer, assign, and convey any or all of the stocks, bonds, obligations, securities, real estate, or other property held at any time by said trustee under this instrument, and to invest and reinvest the proceeds thereof in either real or personal property, including dividend-paying stocks of corporations; provided, however, that during the life of said party of the first part said trustee shall be governed by any instructions or directions given to it in writing by said party of the first part in regard to the management, sale, or investment of any part of the said trust estate, and said trustee shall be free from any liability or responsibility for any action by it done under or in pursuance of any such written directions or instructions. In on event shall any purchaser from the trustee, or any person or corporation dealing with the trustee, be required to ascertain the authority and power of the trustee to make any sale, conveyance, or transfer of any part of the trust estate held hereunder, but every such purchaser and all other parties shall be entitled to rely upon the delivery of the transfer, assignment, or conveyance by the trustee of any or all of said trust estate as having been in all respects fully authorized, and shall not be affected by any notice to the contrary or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the trustee hereunder and to exercise every power, election, and discretion, give every notice, make every demand, and do every act and thing in respect of any shares of stock or bonds or other obligations and securities held by the trustee hereunder which it might or could do if it were the absolute owner thereof; provided, however, that upon the written request of said first party it shall be the duty of the trustee to execute or cause to be executed to the person or persons named in such request a proxy entitling him or them (with full
38 power of substitution) to vote in respect of any shares of stock in such written request or proxy defined and mentioned at any meeting or meetings of the stockholders of any corporation or corporations specified in such request and proxy.

(4) To receive any and all stock dividends declared and any other distribution which may be made by any corporation any of whose shares of stock at the time constitute a part of the principal of the trust estate, and also all proceeds which may be paid on or in respect of any such shares of stock on the liquidation of the company issuing

the same, or upon the sale (whether voluntary or involuntary) of its assets, or any part thereof, or which may be otherwise paid out of the capital or on account of the principal of any bond, stock, or other security; and may in its discretion join in any plan of reorganization or of readjustment of any corporation any of whose shares of stock, bonds, or other securities or obligations may at any time constitute a part of the principal of the trust estate and accept the substituted securities in and by said plan allotted in respect of the securities and obligations so held by the trustee.

(5) To execute leases of any real estate which shall form a part of the said trust at any time at such rental and upon such terms and for such length of time (not exceeding two hundred (200) years) as it may deem best; to erect buildings or to change, alter, or make additions to any existing buildings upon any real estate which may form a part of said trust estate; and to do all other acts in relation to the said real estate which in the judgment of said trustee shall be needful or desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; provided, however, that in every case the said trustee shall observe and be governed by any instructions or request in relation thereto made by an instrument in writing signed by said first party.

Article Third.—Distribution and application of income

The term "net income" as used in this indenture shall be held to mean and include all sums received by the trustee by way of dividends, interests, or rents from the trust estate or any part thereof, after making any and all deductions therefrom in this instru-
39 ment provided for or required by law. Such net income as and when received by the trustee shall be applied and disposed of by the trustee as follows:

(1) During the lifetime of said party of the first part the net income shall be accumulated and added to the principal of said trust estate; provided, however, that such payments out of said net income as may be approved or directed in writing by the said party of the first part shall be made from time to time to the daughter of said party of the first part, Maie Bartlett Heard, or to the guardian of her surviving issue in the event of her death during the life of said party of the first part.

(2) From the death of said party of the first part the net income of said trust estate shall be paid over to the said Maie Bartlett Heard, the daughter of said party of the first part, for and during her life, or until the termination of the trust, as hereinafter provided.

Article Fourth—Distribution of principal of trust estate

The trust hereby created shall terminate at the expiration of five (5) years from the death of the said party of the first part; provided, however, that if the said Maie Bartlett Heard shall die prior

to the expiration of said five (5) years, then and in that case said trust shall terminate at the death of the survivor of the said party of the first part and the said Maie Bartlett Heard. And upon the termination of said trust the said trust estate shall be paid over to Maie Bartlett Heard if she shall be then living, and if she shall not be then living said trust estate shall be held, distributed, or disposed of in accordance with the provisions of the last will and testament of said Maie Bartlett Heard. And in case said Maie Bartlett Heard shall not dispose of said trust estate by her last will and testament, then said trust estate shall be distributed and paid over to the surviving issue of said Maie Bartlett Heard per stirpes; and in default of such surviving issue then the same shall be distributed and paid over to the surviving issue of said party of the first part per stirpes.

40 Article Fifth—Concerning the trustee

The trustee hereby accepts the trust created by this indenture and agrees to act in accordance with its terms and provisions.

The trustee may consult with counsel and shall be fully protected in any action or nonaction taken, permitted or suffered by it in good faith and in accordance with the opinion of counsel selected or provided by it; and in case of legal proceedings involving the trustee or the trust estate, the trustee may defend such proceedings and may, upon being advised by counsel that such action is necessary or advisable for the protection of the interests of the trustee, or of the beneficiaries, institute any legal proceedings.

The trustee shall be reimbursed and indemnified against any and all liability, loss or expense because of the holding of any shares of stock or other properties constituting a part of the principal of the trust estate, either in its own name or in the name of a nominee, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss or expense which may be so incurred by it, including the expense of defending any action or proceeding instituted against it or such nominee by reason of any such holding.

Out of the income of the principal of the trust estate the trustee shall pay all taxes, assessments or other governmental charges which it may be required to pay or to retain because of in respect of any part of the principal of the trust estate or the income therefrom or the interest of the trustee therein, or the interest of any beneficiary or other person therein, under any present or future law of the United States, or of any State, county, municipality, or other taxing authority therein, any and all such taxes, assessments or other governmental charges lawfully imposed being charged as a lien upon the said income, and in case of deficiency of said income upon the principal of the trust estate.

The said trustee, or any successor in trust, may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to the beneficiary hereinbefore named.

41 In case of the resignation of any trustee acting hereunder, or of its disability or incapacity to further act as trustee, said party of the first part, if living, and after his death the said Maie Bartlett Heard, shall have power to appoint a successor in trust by an instrument in writing, delivered to said trustee, and upon the appointment of such successor in trust the said trustee shall sell, convey, assign and deliver to such successor in trust all of the trust estate then in its hands, and thereupon and thereafter such successor in trust shall have all the rights powers, duties and authority which were granted to or imposed upon said original trustee under the provisions of this indenture.

Article Sixth—Miscellaneous provisions

(1) Said grantor has created the foregoing trust to provide for the support and maintenance of the beneficiaries entitled to share in the income of said trust estate, and the said beneficiaries shall have no power to anticipate, assign, or otherwise dispose of or encumber their respective interests in said trust estate, and the same shall not be subject to be taken from them by process of law.

(2) Any of the provisions of this trust deed may be altered, changed, or modified in any respect and to any extent, at any time, by an instrument in writing signed by the said party of the first part and by the said Maie Bartlett Heard, and delivered to the trustee; and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though such original indenture had been executed in such modified or altered form.

In witness whereof the parties hereto have executed this instrument, under seal, the day and year first above written.

ADOLPHUS C. BARTLETT. [SEAL.]
THE NORTHERN TRUST COMPANY,
By SOLOMON A. SMITH, *President.*

Executed in duplicate.
Attest:
[SEAL.] H. H. ROCKWELL,
Asst. Secretary.

42 AMENDMENT OF JUNE 28, 1921

To the NORTHERN TRUST COMPANY,
of Chicago, as trustee.

You are hereby notified that we, the undersigned, Adolphus C. Bartlett and Maie Bartlett Heard (the said Adolphus C. Bartlett being the grantor and party of the first part, said The Northern Trust Company as trustee being the grantee and party of the second part, and the said Maie Bartlett Heard being the beneficiary, in a certain trust indenture dated the 1st day of March, 1919), do hereby, in pursuance of the power in us vested by the terms of said trust

indenture, alter, change, and modify the provisions of said trust indenture by striking out the whole of the third article of said trust indenture and inserting in lieu thereof, as a part of said trust indenture, the following:

"Article Third—Distribution and application of income

"The term 'net income' as used in this indenture shall be held to mean and include all sums received by the trustee by way of interest, dividends, or rents from the trust estate, or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income, as and when received by the trustee, shall be applied and disposed of by the trustee as follows:

"The beneficiaries entitled to ask for and receive the said net income shall be Maie Bartlett Heard during her life, and in the event of her death, leaving issue her surviving, the guardian of such issue shall be entitled to receive said net income; and in default of any such surviving issue, then from the date of such default the surviving issue of said party of the first part, per stirpes, shall be entitled to receive said net income. So much of the net income as the beneficiary or beneficiaries entitled thereto shall ask for during each year shall be paid over to her or them, and the remainder thereof not paid over to the beneficiary or beneficiaries in each calendar year shall be added to and become a part of the principal of said trust estate at the end of each calendar year."

In witness whereof we, the undersigned, have hereunto
43 set our hands and seals this 28th day of June, A. D. 1921 (1921).

ADOLPHUS C. BARTLETT. [SEAL.]
MAIE BARTLETT HEARD. [SEAL.]

In presence of—
DOYLE E. HINTON.
ROBERT O. BURLEY.
R. E. SUGAR.
ALFRED HARIN.

STATE OF WISCONSIN,
County of Walworth, ss.

I, Annie F. Napper, a notary public in and for said county, in the State aforesaid, do hereby certify that Adolphus C. Bartlett, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, A. D. 1921 (1921).

ANNIE F. NAPPER,
Notary Public.

My commission expires April 27, 1924.

STATE OF KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England,
County of United States Consulate General, ss:

I, Richard Westacott, vice consul of the United States of America at London, England, in and for said county, in the State aforesaid, do hereby certify that Maie Bartlett Heard, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official this 15th day of July, A. D. 1921.

#9312.

R. WESTACOTT,
Vice Consul of the United States of America at London, England.

44 13. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Numbers 13, 14, 15, 16 and 17, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations that the said transfer was not made in contemplation of the death of the grantor, or to take effect in possession of enjoyment at or after his death; that the grantor retained no beneficial interest in the property so conveyed, and exercised no dominion or power over it, and that in filing its estate tax return the plaintiff did not include the said property in its computation of the gross value of the estate, but did give in the said return the full information concerning the said transfer, all of which will more specifically appear by a reference to said paragraphs.

18. That thereafter the Commissioner of Internal Revenue conducted an investigation of the said return of the plaintiff as said executor, of the value of the net estate of Adolphus C. Bartlett, deceased, and of the value of the properties conveyed by the said trust indenture above referred to, fixed and determined the value of the said properties in the sum of $302,492.43, included the said value in the computation of the gross estate of the decedent, and thereby increased in a like amount the value of the net estate of the said Adolphus C. Bartlett, deceased, for the purpose of the assessment of the said estate tax.

19. That thereupon the said Commissioner of Internal Revenue, on or about the 1st day of May, 1924, did **assess an additional tax,** computed on the inclusion in the gross estate of the decedent of the above-mentioned value of the properties above referred to, and also the value of certain other properties elsewhere referred to, which additional tax as assessed on all such properties amounted to the

sum of $314,993.93, of which total amount the sum of $54,588.64 represented the additional tax assessed as the result of the inclusion in the gross estate of the decedent of the properties referred to and conveyed by the said trust indenture.

20. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration:

Numbers 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32,
45 except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain the allegations concerning the notice, demand, and payment of the said additional tax, the claim for refund, the denial of the Commissioner of Internal Revenue of the claim for refund, and the averments of the plaintiff that the said property should not be taxed, all of which will more specifically appear by reference to said paragraphs.

By reason whereof the said defendant became liable, and is bound by law, to refund and pay to the plaintiff the amount so paid of $54,588.64, with interest thereon, according to statute made and provided.

FOURTH COUNT

For that whereas the plaintiff alleges:

1. That it adopts, for the purposes of this count in this declaration, the following numbered paragraphs as found in the first count thereof with like effect as though they were set up in full herein, that is to say: Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration.

12. The said Adolphus C. Bartlett during his lifetime, and in and by a certain indenture of trust bearing date the 1st day of March, 1919, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of Cook, and State of Illinois, as trustee, certain properties more specifically described in the said instrument, which said indenture of trust, for the purposes of identification, bears the number of the Northern Trust Company, No. 4480.

That on, to wit, the 28th day of June, 1921, by an instrument in writing, the said trust indenture was, in accordance with the power therein contained, amended in certain particulars, which will more specifically appear from the said instrument of amendment. And the said trust indenture and the amendment thereto above spoken of were in words and figures as follows:

This indenture, made this first day of March, in the year of our
46 Lord one thousand nine hundred and nineteen (A. D. 1919), between Adolphus C. Bartlett, of the city of Chicago, county of Cook, and State of Illinois, the party of the first part,

and the Northern Trust Company, of Chicago (hereinafter termed the "trustee"), a corporation organized and doing business under the laws of the State of Illinois, the party of the second part, witnesseth:

Article First

The party of the first part, being desirous of establishing and creating the trust hereinafter mentioned, for the purposes and upon the terms set forth, in consideration of the premises and influenced by love and affection for the beneficiary hereinafter named, does hereby sell, assign, transfer and set over unto the trustee the following securities, to wit:

300 shares of the stock of the First National Bank of Chicago;
200 shares of the stock of Commonwealth Edison Company of Chicago;
100 shares of the stock of the Illinois Central Railroad Company;
100 shares of the common stock of the Chicago & Northwestern Railway Company;
10 bonds of Morris & Company, of the par value of $1,000 each;
10 bonds of the Central Manufacturing Company, of the par value of $1,000 each;
5 bonds of the American Foreign Securities, of the par value of $1,000 each;
5 bonds of Armour & Company, of the par value of $1,000 each;

to be held and disposed of under and in pursuance of the terms of this indenture.

Article Second

The trustee shall have power and authority at any time, and from time to time—

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds or obligations at any
47 time held by it hereunder, and also all rents and other income which shall accrue or become due and payable on or from any of the trust estate hereunder.

(2) To sell, transfer, assign, and convey any or all of the stocks, bonds, obligations, securities, real estate, or other property held at any time by said trustee under this instrument, and to invest and reinvest the proceeds thereof in either real or personal property, including dividend-paying stocks of corporations; provided, however, that during the life of said party of the first part said trustee shall be governed by any instructions or directions given to it in writing by said party of the first part in regard to the management, sale, or investment of any part of the said trust estate, and said trustee shall be free from any liability or responsibility for any action by it done under or in pursuance of any such written directions or instruc-

tions. In no event shall any purchaser from the trustee, or any person or corporation dealing with the trustee, be required to ascertain the authority and power of the trustee to make any sale, conveyance, or transfer of any part of the trust estate held hereunder, but every such purchaser and all other parties shall be entitled to rely upon the delivery of the transfer, assignment, or conveyance by the trustee of any or all of said trust estate as having been in all respects fully authorized, and shall not be affected by any notice to the contrary, or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the trustee hereunder, and to exercise every power, election, and discretion, give every notice, make every demand, and do every act and thing in respect of any shares of stock or bonds, or other obligations and securities held by the trustee hereunder, which it might or could do if it were the absolute owner thereof; provided, however, that upon the written request of said first party it shall be the duty of the trustee to execute, or cause to be executed, to the person or persons named in such request a proxy, entitling him or them (with full power of substitution) to vote in respect of any shares of stock in such written request or proxy defined and mentioned, at any meeting or meetings of the stockholders of any corporation or corporations specified in such request and proxy.

(4) To receive any and all stock dividends declared, and any other distribution which may be made by any corporation, any of
68 whose shares of stock at the time constitute a part of the principal of the trust estate, and also all proceeds which may be paid or in respect of any such shares of stock on the liquidation of the company issuing the same, or upon the sale (whether voluntary or involuntary) of its assets, or any part thereof, or which may be otherwise paid out of capital or on account of the principal of any bond, stock, or other security; and may in its discretion join in any plan of reorganization or of readjustment of any corporation, any of whose shares of stock, bonds, or other securities or obligations may at any time constitute a part of the principal of the trust estate, and accept the substituted securities in and by said plan allotted in respect of the securities and obligations so held by the trustee.

(5) To execute leases of any real estate which shall form a part of the said trust at any time, at such rental, and upon such terms, and for such length of time (not exceeding two hundred (200) years) as it may deem best; to erect buildings, or to change, alter, or make additions to any existing buildings upon any real estate which may form a part of said trust estate; and to do all other acts in relation to the said real estate which in the judgment of said trustee shall be needful or desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; provided, however, that in every case the said trustee shall observe and be governed by any instructions or request in relation thereto made by an instrument in writing, signed by said first party.

Article Third—Distribution and application of income

The term "net income" as used in this indenture shall be held to mean and include all sums received by the trustee by way of dividends, interest, or rents from the trust estate or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income as and when received by the trustee shall be applied and disposed of by the trustee as follows:

(1) During the lifetime of said party of the first part said net income shall be accumulated and added to the principal of said trust estate; provided, however, that such payments out of said net income as may be approved or directed in writing by the said party of the first part shall be made from time to time to the daughter of said party of the first part, Eleanor Bartlett Perdue, or to the guardian of her surviving issue in the event of her death during the life of said party of the first part.

(2) From the death of said party of the first part the net income of said trust estate shall be paid over to the said Eleanor Bartlett Perdue, the daughter of said party of the first part, for and during her life, or until the termination of the trust, as hereinafter provided.

Article Fourth—Distribution of principal of trust estate

The trust hereby created shall terminate at the expiration of five (5) years from the death of the said party of the first part; provided, however, that if the said Eleanor Bartlett Perdue shall die prior to the expiration of said five (5) years, then and in that case said trust shall terminate at the death of the survivor of the said party of the first part and the said Eleanor Bartlett Perdue. And upon the termination of said trust the said trust estate shall be paid over to Eleanor Bartlett Perdue, if she shall be then living, and if she shall not be then living said trust estate shall be held, distributed, or disposed of in accordance with the provisions of the last will and testament of said Eleanor Bartlett Perdue. And in case said Eleanor Bartlett Perdue shall not dispose of said trust estate by her last will and testament then said trust estate shall be distributed and paid over to the surviving issue of said Eleanor Bartlett Perdue per stirpes; and in default of such surviving issue then the same shall be distributed and paid over to the surviving issue of said party of the first part per stirpes.

Article Fifth—Concerning the trustee

The trustee hereby accepts the trust created by this indenture and agrees to act in accordance with its terms and provisions.

The trustee may consult with counsel and shall be fully protected in any action or nonaction taken, permitted, or suffered by it in good faith and in accordance with the opinion

of counsel selected or provided by it; and in case of legal proceedings involving the trustee or the trust estate, the trustee may defend such proceedings and may, upon being advised by counsel that such action is necessary or advisable for the protection of the interests of the trustee, or of the beneficiaries, institute any legal proceedings.

The trustee shall be reimbursed and indemnified against any and all liability, loss, or expense because of the holding of any shares of stock or other properties constituting a part of the principal of the trust estate, either in its own name or in the name of a nominee, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss, or expense which may be so incurred by it, including the expense of defending any action or proceeding instituted against it or such nominee by reason of any such holding.

Out of the income of the principal of the trust estate the trustee shall pay all taxes, assessments, or other governmental charges which it may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the trustee therein, or the interest of any beneficiary or other person therein, under any present or future law of the United States, or of any State, county, municipality, or other taxing authority therein, any and all such taxes, assessments, or other governmental charges lawfully imposed being charged as a lien upon the said income, and in case of deficiency of said income upon the principal of the trust estate.

The said trustee, or any successor in trust, may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to the beneficiary hereinbefore named.

In case of the resignation of any trustee acting hereunder, or of its disability or incapacity to further act as trustee, said party of the first part, if living, and after his death the said Eleanor Bartlett Perdue, shall have power to appoint a successor in trust by an instrument in writing, delivered to said trustee, and upon the appointment of such successor in trust the said trustee shall sell, convey, assign, and deliver to such successor in trust all of the trust estate then in its hands, and thereupon and thereafter such successor in trust
31 shall have all the rights, powers, duties, and authority which were granted to or imposed upon said original trustee under the provisions of this indenture.

Article Sixth—Miscellaneous provisions

(1) Said grantor has created the foregoing trust to provide for the support and maintenance of the beneficiaries entitled to share in the income of said trust estate, and the said beneficiaries shall have no power to anticipate, assign, or otherwise dispose of or encumber their respective interests in said trust estate, and the same shall not be subject to be taken from them by process of law.

(2) Any of the provisions in this trust deed may be altered, changed, or modified in any respect and to any extent, at any time, by an instrument in writing signed by the said party of the first part and by the said Eleanor Bartlett Perdue, and delivered to the trustee; and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though such original indenture had been executed in such modified or altered form.

In witness whereof the parties hereto have executed this instrument, under seal, the day and year first above written.

ADOLPHUS C. BARTLETT. [SEAL.]
THE NORTHERN TRUST COMPANY,
By SOLOMON A. SMITH, *President.*

Executed in duplicate.
Attest:
[SEAL.] H. H. ROCKWELL, *Asst. Secretary.*

52 AMENDMENT OF 28TH OF JUNE, 1921

To the NORTHERN TRUST COMPANY, of Chicago, as trustee.

You are hereby notified that we, the undersigned, Adolphus C. Bartlett and Eleanor Bartlett Perdue (the said Adolphus C. Bartlett being the grantor and party of the first part, said The Northern Trust Company as trustee being the grantee and party of the second part, and the said Eleanor Bartlett Perdue being the beneficiary in a certain trust indenture dated the 1st day of March, 1919), do hereby, in pursuance of the power in us vested by the terms of said trust indenture, alter, change, and modify the provisions of said trust indenture by striking out the whole of the third article of said trust indenture and inserting in lieu thereof, as a part of said trust indenture, the following:

"Article Third—Distribution and application of income

"The term 'net income' as used in this indenture shall be held to mean and include all sums received by the trustee by way of interest, dividends, or rents from the trust estate, or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income, as and when received by the trustee, shall be applied and disposed of by the trustee as follows:

"The beneficiaries entitled to ask for and receive the said net income shall be Eleanor Bartlett Perdue during her life, and in the event of her death, leaving issue her surviving, the guardian of such issue shall be entitled to receive said net income; and in default of any such surviving issue then from the date of such default the surviving issue of said party of the first part, per stirpes, shall be entitled to receive said net income. So much of the net income as the beneficiary or beneficiaries entitled thereto shall ask for during each

year shall be paid over to her or them, and the remainder thereof not paid over to the beneficiary or beneficiaries in each calendar year shall be added to and become a part of the principal of said trust estate at the end of each calendar year."

53 In witness whereof we, the undersigned, have hereunto set our hands and seals this 28th day of June, A. D. 1921 (1921).

ELEANOR BARTLETT PERDUE. [SEAL.]
ADOLPHUS C. BARTLETT. [SEAL.]

In presence of—
DOYLE E. HINTON.
ROBERT O. BURLEY.

STATE OF WISCONSIN,
County of Walworth, ss:

I, Annie F. Napper, a notary public in and for said county, in the State aforesaid, do hereby certify that Adolphus C. Bartlett, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, A. D. 1921 (1921).

ANNIE F. NAPPER,
Notary Public.

My commission expires April 27, 1924.

STATE OF ALABAMA,
County of Mobile, ss:

I, T. Potter Yeend, a notary public in and for said county, in the State aforesaid, do hereby certify that Eleanor Bartlett Perdue, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of July, A. D. 1921 (1921).

T. POTTER YEEND,
Notary Public.

13. That it adopts for the purposes of this count of this
54 declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Numbers 13, 14, 15, 16, and 17, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations that the said transfer was not made in contemplation of the death of the grantor, or to take effect in possession or enjoyment at or after his death; that the grantor retained no beneficial interest

in the property so conveyed, and exercised no dominion or power over it, and that in filing its estate tax return the plaintiff did not include the said property in its computation of the gross value of the estate, but did give in the said return the full information concerning the said transfer, all of which will more specifically appear by a reference to said paragraphs.

18. That thereafter the Commissioner of Internal Revenue conducted an investigation of the said return of the plaintiff as said executor, of the value of the net estate of Adolphus C. Bartlett, deceased, and of the value of the properties conveyed by the said trust indenture above referred to, and fixed and determined the value of the said properties in the sum of $249,751.29, including the said value in the computation of the gross estate of the decedent, and thereby increased in a like amount the value of the net estate of the said Adolphus C. Bartlett, deceased, for the purpose of the assessment of the said estate tax.

19. That thereupon the said Commissioner of Internal Revenue, on or about the 1st day of May, 1924, did assess an additional tax, computed on the inclusion in the gross estate of the decedent of the above-mentioned value of the properties above referred to, and also the value of certain other properties elsewhere referred to, which additional tax as assessed on all such properties amounted to the sum of $314,993.93, of which total amount the sum of $44,955.23 represented the additional tax assessed as the result of the inclusion in the gross estate of the decedent of the properties referred to and conveyed by the said trust indenture.

20. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Numbers 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain the allegations concerning the notice, demand, and payment of the said additional tax, the claim for refund, the denial of the Commissioner of Internal Revenue of the claim for refund, and the averments of the plaintiff that the said property should not be taxed, all of which will more specifically appear by reference to said paragraphs.

By reason whereof the said defendant became liable, and is bound by law to refund and pay to the plaintiff the amount so paid of $44,955.23, with interest thereon, according to the statute made and provided.

Fifth Count

For that whereas the plaintiff alleges:

1. That it adopts, for the purposes of this count in this declaration, the following numbered paragraphs as found in the first count hereof, with like effect as though they were set up in full herein, that is to say, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, except

that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration.

12. The said Adolphus C. Bartlett during his lifetime, and in and by a certain indenture of trust bearing date the first day of March, 1919, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of Cook, and State of Illinois, as trustee, certain properties more specifically described in the said instrument, which said indenture of trust, for the purposes of identification, bears the number of the Northern Trust Company, No. 4481.

That on, to wit, the 28th day of June, 1921, by an instrument in writing, the said trust indenture was, in accordance with the powers therein contained, amended in certain particulars, which will more specifically appear from the said instrument of amendment. And the said trust indenture and the amendment thereto above spoken of were in words and figures as follows:

This indenture, made this first day of March, in the year of our Lord one thousand nine hundred and nineteen (A. D. 1919),
56 by and between Adolphus C. Bartlett, of the city of Chicago, county of Cook, and State of Illinois, the party of the first part, and the Northern Trust Company, of Chicago (hereinafter termed the "trustee"), a corporation organized and doing business under the laws of the State of Illinois, the party of the second part, witnesseth:

Article First

The party of the first part, being desirous of establishing and creating the trust hereinafter mentioned, for the purposes and upon the terms set forth, in consideration of the premises and influenced by love and affection for the beneficiary hereinafter named, does hereby sell, assign, transfer, and set over unto the trustee the following securities, to wit:

300 shares of the stock of the First National Bank of Chicago;
200 shares of the stock of the Elgin National Watch Company;
200 shares of the stock of the Commonwealth Edison Company;
100 shares of the common stock of the Chicago & Northwestern Railway Company;
10 bonds of the Central Manufacturing Company, of the par value of $1,000 each;
25 bonds of the United States of America (known as fourth Liberty loan bonds), of the par value of $1,000 each;

to be held and disposed of under and in pursuance of the terms of this indenture.

Article Second

The trustee shall have power and authority at any time, and from time to time—

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds, or obligations at any time held by it hereunder, and also all rents and other income which shall accrue or become due and payable on or from any of the trust estate hereunder.

(2) To sell, transfer, assign, and convey any or all of the stocks, bonds, obligations, securities, real estate, or other property held
57 at any time by said trustee under this instrument, and to invest and reinvest the proceeds thereof in either real or personal property, including dividend-paying stocks of corporations; provided, however, that during the life of said party of the first part said trustee shall be governed by any instructions or directions given to it in writing by said party of the first part in regard to the management, sale, or investment of any part of said trust estate, and said trustee shall be free from any liability or responsibility for any action by it done under or in pursuance of any such written directions or instructions. In no event shall any purchaser from the trustee, or any person or corporation dealing with the trustee, be required to ascertain the authority and power of the trustee to make any sale, conveyance, or transfer of any part of the trust estate held hereunder, but every such purchaser and all other parties shall be entitled to rely upon the delivery of the transfer, assignment, or conveyance by the trustee of any or all of said trust estate as having been in all respects fully authorized, and shall not be affected by any notice to the contrary, or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the trustee hereunder, and to exercise every power, election, and discretion, give every notice, make every demand, and do every act and thing in respect of any shares of stock or bonds, or other obligations and securities held by the trustee hereunder, which it might or could do if it were the absolute owner thereof; provided, however, that upon the written request of said first party it shall be the duty of the trustee to execute, or cause to be executed, to the person or persons named in such request a proxy, entitling him or them (with full power of substitution) to vote in respect of any shares of stock in such written request or proxy defined and mentioned, at any meeting or meetings of the stockholders of any corporation or corporations specified in such request and proxy.

(4) To receive any and all stock dividends declared, and any other distribution which may be made by any corporation, any of whose shares of stock at any time constitute a part of the principal of the

trust estate, and also all proceeds which may be paid on or in respect of any such shares of stock on the liquidation of the company issuing the same, or upon the sale (whether voluntary or involuntary) of its assets, or any part thereof, or which may be otherwise paid out
58 of capital or on account of the principal of any bond, stock, or other security; and may in its discretion join in any plan of reorganization or of readjustment of any corporation, any of whose shares of stock, bonds of other securities or obligations may at any time constitute a part of the principal of the trust estate, and accept the substituted securities in and by said plan allotted in respect of the securities and obligations so held by the trustee.

(5) To execute leases of any real estate which shall form a part of the said trust at any time at such rental, and upon such terms, and for such length of time (not exceeding two hundred (200) years) as it may deem best; to erect buildings, or to change, alter, or make additions to any existing buildings upon any real estate which may form a part of said trust estate; and to do all other acts in relation to the said real estate which in the judgment of said trustee shall be needful or desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; provided, however, that in every case the said trustee shall observe and be governed by any instructions or request in relation thereto made by an instrument in writing, signed by said first party.

Article Third—Distribution and application of income

The term "net income" as used in this indenture shall be held to mean and include all sums received by the trustee by way of dividends, interest, or rents from the trust estate or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income as and when received by the trustee shall be applied and disposed of by the trustee as follows:

(1) During the lifetime of said party of the first part said net income shall be accumulated and added to the principal of said trust estate; provided, however, that such payments out of said net income as may be approved or directed in writing by the said party of the first part shall be made from time to time to the daughter of said party of the first part, Florence Dibell Bartlett, or to the guardian of her surviving issue in the event of her death during the life of said party of the first part.

(2) From the death of said party of the first part the net in-
59 come of said trust estate shall be paid over to the said Florence Dibell Bartlett, the daughter of said party of the first part, for and during her life, or until the termination of the trust, as hereinafter provided.

Article Fourth.—Distribution of principal of trust estate

The trust hereby created shall terminate at the expiration of five (5) years from the death of the said party of the first part; provided, however, that if the said Florence Dibell Bartlett shall die prior to the expiration of said five (5) years, then and in that case said trust shall terminate at the death of the survivor of the said party of the first part and the said Florence Dibell Bartlett. And upon the termination of said trust the said trust estate shall be paid over to Florence Dibell Bartlett if she shall be then living and if she shall not be then living said trust estate shall be held, distributed, and disposed of in accordance with the provisions of the last will and testament of said Florence Dibell Bartlett. And in case said Florence Dibell Bartlett shall not dispose of said trust estate by her last will and testament then said trust estate shall be distributed and paid over to the surviving issue of said Florence Dibell Bartlett per stirpes, and in default of such surviving issue then the same shall be distributed and paid over to the surviving issue of said party of the first part per stirpes.

Article Fifth.—Concerning the trustee

The trustee hereby accepts the trust created by this indenture and agrees to act in accordance with its terms and provisions.

The trustee may consult with counsel and shall be fully protected in any action or nonaction taken, permitted, or suffered by it in good faith and in accordance with the opinion of counsel selected or provided by it; and in case of legal proceedings involving the trustee or the trust estate, the trustee may defend such proceedings and may, upon being advised by counsel that such action is necessary or advisable for the protection of the interests of the trustee, or of the beneficiaries, institute any legal proceedings.

60 The trustee shall be reimbursed and indemnified against any and all liability, loss, or expense because of the holding of any shares of stock or other properties constituting a part of the principal of the trust estate, either in its own name or in the name of a nominee, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss, or expense which may be so incurred by it, including the expense of defending any action or proceeding instituted against it or such nominee by reason of any such holding.

Out of the income of the principal of the trust estate the trustee shall pay all taxes, assessments, or other governmental charges which it may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the trustee therein, or the interest of any beneficiary or other person therein, under any present or future law of the United States, or of any State, county, municipality, or other taxing author-

ity therein, any and all such taxes, assessments, or other governmental charges lawfully imposed being charged as a lien upon the said income, and in case of deficiency of said income upon the principal of the trust estate.

The said trustee, or any successor in trust, may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to the beneficiary hereinbefore named.

In case of the resignation of any trustee acting hereunder, or of its disability or incapacity to further act as trustee, said party of the first part, if living, and after his death the said Florence Dibell Bartlett, shall have power to appoint a successor in trust by an instrument in writing, delivered to said trustee, and upon the appointment of such successor in trust the said trustee shall sell, convey, assign, and deliver to such successor in trust all of the trust estate then in its hands, and thereupon and thereafter such successor in trust shall have all the rights, powers, duties, and authority which were granted to or imposed upon said original trustee under the provisions of this indenture.

61 Article Sixth—Miscellaneous provisions

(1) Said grantor has created the foregoing trust to provide for the support and maintenance of the beneficiaries entitled to share in the income of said trust estate, and the said beneficiaries shall have no power to anticipate, assign or otherwise dispose of or encumber their respective interests in said trust estate, and the same shall not be subject to be taken from them by process of law.

(2) Any of the provisions in this trust deed may be altered, changed, or modified in any respect and to any extent, at any time, by an instrument in writing signed by the said party of the first part and by the said Florence Dibell Bartlett, and delivered to the trustee; and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though such original indenture had been executed in such modified or altered form.

In witness whereof the parties hereto have executed this instrument, under seal, the day and year first above written.

(Signed) Adolphus C. Bartlett. [seal.]
The Northern Trust Company,
By Solomon A. Smith, *President.*

Attest:
H. H. Rockwell,
Asst. Secretary.

AMENDMENT OF JUNE 28, 1921

To the NORTHERN TRUST COMPANY, of Chicago, as trustee.

You are hereby notified that we, the undersigned, Adolphus C. Bartlett and Florence Dibell Bartlett (the said Adolphus C. Bartlett being the grantor and party of the first part, said The Northern Trust Company as trustee being the grantee and party of the second part, and the said Florence Dibell Bartlett being the beneficiary, in a certain trust indenture dated the 1st day of March, 1919), do
62 hereby, in pursuance of the power in us vested by the terms of said trust indenture, alter, change, and modify the provisions of said trust indenture by striking out the whole of the third article of said trust indenture and inserting in lieu thereof, as a part of said trust indenture, the following:

"Article Third—Distribution and application of income

"The term 'net income' as used in this indenture shall be held to mean and include all sums received by the trustee by way of interest, dividends or rents from the trust estate, or any part thereof, after making any and all deductions therefrom in this instrument provided for or required by law. Such net income, as and when received by the trustee, shall be applied and disposed of by the trustee as follows:

"The beneficiaries entitled to ask for and receive the said net income shall be Florence Dibell Bartlett during her life, and in the event of her death, leaving issue her surviving, the guardian of such issue shall be entitled to receive said net income, and in default of any such surviving issue then from the date of such default the surviving issue of said party of the first part, per stirpes, shall be entitled to receive said net income. So much of the net income as the beneficiary or beneficiaries entitled thereto shall ask for during each year shall be paid over to her or them, and the remainder thereof not paid over to the beneficiary or beneficiaries in each calendar year shall be added to and become a part of the principal of said trust estate at the end of each calendar year."

In witness whereof we, the undersigned, have hereunto set our hands and seals this 28th day of June, A. D. 1921.

ADOLPHUS C. BARTLETT. [SEAL.]
FLORENCE DIBELL BARTLETT. [SEAL.]

In presence of—
DOYLE E. HINTON.
ROBERT O. BURLEY.

STATE OF WISCONSIN,
County of Walworth, ss:

I, Annie F. Napper, a notary public in and for said county, in the State aforesaid, do hereby certify that Adolphus C. Bartlett,
63 personally known to me to be the same person whose name is

subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, A. D. 1921.

ANNIE F. NAPPER,
Notary Public.

My commission expires April 27, 1924.

STATE OF WISCONSIN,
County of Walworth, ss:

I, Annie F. Napper, a notary public in and for said county, in the State aforesaid, do hereby certify that Florence Dibell Bartlett, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of June, A. D. 1921.

ANNIE F. NAPPER,
Notary Public.

My commission expires April 27, 1924.

13. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full face herein, the following numbered paragraphs of the first count of this declaration: Numbers 13, 14, 15, 16 and 17, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraph contain allegations that the said transfer was not made in contemplation of the death of the grantor, or to take effect in possession or enjoyment at or after his death; that the grantor retained no beneficial interest in the property so conveyed, and exercised no dominion or power over it, and that in filing its estate tax return the plaintiff did not include the said property in its computation of the gross value of the estate, but did give in the said return the full information concerning the said transfer, all of which will more specifically appear by a reference to said paragraphs.

64 18. That thereafter the Commissioner of Internal Revenue conducted an investigation of the said return of the plaintiff as said executor, of the value of the net estate of Adolphus C. Bartlett, deceased, and of the value of the properties conveyed by the said trust indenture above referred to, and fixed and determined the value of the said properties in the sum of $297,350.04, included the said value in the computation of the gross estate of the decedent, and thereby increased in a like amount the value of the net

estate of the said Adolphus C. Bartlett, deceased, for the purpose of the assessment of the said estate tax.

19. That thereupon the said Commissioner of Internal Revenue, on or about the 1st day of May, 1924, did assess an additional tax, computed on the inclusion in the gross estate of the decendent of the above mentioned value of the properties above referred to, and also the value of certain other properties elsewhere referred to, which additional tax as assessed on all such properties amounted to the sum of $314,293.93, of which total amount the sum of $53,523.01 represented the additional tax assessed as the result of the inclusion in the gross estate of the decedent of the properties referred to and conveyed by the said trust indenture.

20. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Number 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain the allegations concerning the notice, demand and payment of the said additional tax, the claim for refund, the denial of the Commissioner of Internal Revenue of the claim for refund, and the averment of the plaintiff that the said property should not be taxed, all of which will more specifically appear by reference to said paragraphs.

By reason whereof the said defendant became liable, and is bound by law, to refund and pay to the plaintiff the amount so paid of $53,523.01, with interest thereon, according to statute made and provided.

65 SIXTH COUNT

For what whereas the plaintiff alleges:

1. That it adopts for the purposes of this count in this declaration the following numbered paragraphs found in the first count hereof, with like effect as though they were set up in full herein, that is to say, paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration.

12. That the said Adolphus C. Bartlett during his lifetime, and on or about the 11th day of February, 1903, and in and by a certain indenture of trust bearing the said date, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of Cook, and State of Illinois, as trustee, certain properties, more specifically described in the said instrument. The said indenture of trust, for purposes of identification, bears the number of the Northern Trust Company, Number 1831, and was in words and figures as follows:

Know all men by these presents, that I, Adolphus C. Bartlett of Chicago, Illinois, do hereby give, assign, and transfer unto the Northern Trust Company (a corporation of said city of Chicago), three hundred and sixty (360) shares of the capital stock of the Illinois Central Railroad Company, in trust for the following uses and purposes, to wit:

1st. To collect the dividends thereon, so long as I shall live, and to pay said dividends to me, or to my order, during my lifetime.

2nd. After my death to collect the dividends upon said stock and pay the same to my daughter, Florence D. Bartlett.

3rd. After my death to transfer and assign to *to* said Florence D. Bartlett one-half of said stock, if and when she shall attain the age of thirty years, and to assign and transfer to said Florence D. Bartlett the remainder of said stock if and when she shall attain the age of thirty-five years.

4th. In case said Florence D. Bartlett shall die before receiving all of said stock as above provided, then and in such case, after my death, and upon the death of said Florence D. Bartlett, to transfer said stock then held by said trustee to the person or persons
66 whom said Florence D. Bartlett shall bequeath the same in and by her last will and testament, and in default of such bequest then to her heirs at law.

5th. Said trustee shall have the right, at its discretion, to sell said stock and invest the proceeds thereof in such other dividend-bearing or interest-bearing securities as it shall deem best, and to hold and apply the same, as trustee, in the same manner as hereinbefore provided regarding said stock.

6th. In case for any reason I shall elect, during my lifetime, to receive back said stock, or other securities in which the proceeds thereof may have been invested by said trustee, or any part or portion of said stock or other securities, I reserve the right to have said stock, or its equivalent, or any part or portion thereof retransferred to me, and to cancel the trust hereby created relative thereto, either in whole or in part, and to possess and enjoy said stock and its equivalent, or any part or portion thereof, as though this trust had not been created.

In witness whereof I have hereunto set my hand and seal this eleventh (11th) day of February, A. D. 1903.

(Signed) ADOLPHUS C. BARTLETT. [SEAL.]

The Northern Trust Company (an Illinois corporation) hereby acknowledges receipt of the shares of stock specified in the foregoing instrument, to wit, three hundred sixty (360) shares of the capital stock of the Illinois Central Railroad Company, and accepts the trust relative thereto set forth in the foregoing instrument.

THE NORTHERN TRUST COMPANY,
By ARTHUR HEURTLEY,
Its Secretary.

Executed in duplicate.

13. That the said indenture of trust having been executed and delivered on or about the date it bears, to wit, the 11th day of February, 1903, and long before the revenue act of 1921, above referred to, became effective on the 23rd day of November, 1921, the said Federal estate-tax statute, in so far as it provides for a tax upon the transfer made prior to the passage of the said statute, was unconstitutional and void.

14. That the plaintiff in filing its said estate-tax return, as aforesaid, did include in its computation of the gross value of the said estate the value of the properties conveyed, as aforesaid, to the Northern Trust Company as trustee under the said
67 indenture above set out, and stated therein the value of the said properties to be $44,194.50, thereby increasing the net estate a similar amount, and the tax upon the said transfer was in the sum of $7,955.04, which was included in the aforementioned sum of $225,197.01, and was paid to the defendant herein on the 29th day of May, 1923, by the plaintiff, under compulsion and in fear of the penalties provided in the said statute.

15. That it adopts for the purposes of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count in this declaration: Numbers 24, 25, 26, 27, 28, 29, 30, and 31, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations concerning the claim for refund, and the denial by the Commissioner of Internal Revenue of refund of the said claim, all of which will more specifically appear by reference to the said paragraphs.

By reason whereof the said defendant became liable, and is bound by law, to refund and pay to the plaintiff the amount so paid, $7,955.04, with interest thereon, according to the statute made and provided.

Seventh Count

For that whereas the plaintiff alleges:

1. That it adopts for the purposes of this count in this declaration the following numbered paragraphs found in the first count hereof, with like effect as though they were set up in full herein, that is to say, paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration.

12. That the said Adolphus C. Bartlett during his lifetime, and on or about the 30th day of December, 1910, and in and by a certain indenture of trust bearing the said date, transferred and conveyed to the Northern Trust Company, a corporation authorized to accept and execute trusts under the laws of the State of Illinois, and having its principal place of business in the city of Chicago, county of
68 Cook, and State of Illinois, as trustee, certain properties, more specifically described in the said instrument. The said indenture of trust, for purpose of identification, bears the number of the

Northern Trust Company, Number 3048, and was in words and figures as follows:

This indenture, made and executed this 30th day of December, 1910, by Adolphus C. Bartlett, witnesseth:

That said Adolphus C. Bartlett, for and in consideration of one dollar in hand paid and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby transfer, assign, and convey unto the Northern Trust Company, a corporation duly organized under and by virtue of the laws of the State of Illinois, as trustee—

20 bonds, par value $1,000 each, of the Chicago City Railway Company;

20 bonds, par value $1,000 each, of the J. I. Case Threshing Machine Company;

30 bonds, par value $1,000 each, of the American Telephone & Telegraph Company;

25 bonds, par value $1,000 each, of Morris & Company;

15 bonds, par value $1,000 each, of the Chicago, Lake Shore & Eastern Railway Company;

to have and to hold the same subject to the following trusts, purposes and conditions, to wit:

During the period of trusteeship as hereinafter fixed said Trust Company shall hold, manage, care for and protect said trust fund and collect the income and principal therefrom, all in accordance with its best judgment and discretion. Any part of the trust estate that may be converted into cash shall be invested in bonds, stocks, real estate mortgages, or other income-producing securities, either within or without the State of Illinois, said trustee to have as wide latitude in the selection and making of any investments as if it as an individual were the sole owner of said trust estate; provided, however, that during the life of said Adolphus C. Bartlett no investments shall be made without his approval. Said trustee is hereby given full power to sell and convey any or all of said trust property or any reinvestment thereof from time to time for such prices and upon such terms as it shall see fit, either for the purpose of reinvestment or of carrying out any provisions of this trust, and the purchaser or purchasers shall not be obliged to see to the application of the purchase money; provided, however, that during the life of said Adolphus C. Bartlett no sales shall be made without his approval.

69 Said trustee shall be reimbursed out of the trust estate for the reasonable and proper expenditures made or incurred by it in managing the trust and shall also be entitled to reasonable compensation out of the income from said trust estate for its services hereunder.

The entire net income shall be paid to said Adolphus C. Bartlett during his life and from and after his death such entire net income or so much thereof as the trustee thinks best shall be paid to Eleanor C. Bartlett, daughter of said Adolphus C. Bartlett, until she reaches

the age of fifty (50) years, at which time or upon the death of Adolphus C. Bartlett in case she shall then have reached the age of fifty (50) years, the entire principal of the trust estate shall be transferred and assigned to her to be her absolute estate forever. In case the trustee should be of the opinion that any portion of the income should not be paid to my said daughter then such portion of the income shall be accumulated and be added to the principal of the trust estate, such accumulation not to last more than twenty-one (21) years from the date of this instrument, after which time the entire net income shall be paid to my said daughter. In case of the death of said Eleanor C. Bartlett before receiving the principal of said trust estate then upon her death, in case such death occurs after the death of Adolphus C. Bartlett, or upon the death of Adolphus C. Bartlett in case her death occurs prior to his, the principal of the trust estate shall be distributed in accordance with the provisions of her last will and testament, any disposition by will of her estate to be regarded as an exercise of this power of appointment, and in case she should fail to provide for such distribution by last will and testament then the same shall be distributed among her heirs at law as the same may be ascertained by the laws of descent of the State of Illinois in force at the time of distribution.

Said Adolphus C. Bartlett hereby expressly reserves the right of revoking this instrument and each and every trust hereby created, either in whole or in part, by notice in writing to the trustee, and in case of such revocation said trust fund or the portion thereof as to which this indenture may be revoked shall be conveyed by said trustee to said Adolphus C. Bartlett, to be held by him freed from all trusts herein contained.

In witness whereof said Adolphus C. Bartlett has hereunto set his hand and seal and said The Northern Trust Company, to evidence its acceptance of the trusts, has caused its name to be signed by its duly authorized officer the day and year first above written.

ADOLPHUS C. BARTLETT. [SEAL.]
THE NORTHERN TRUST COMPANY,
By ARTHUR HEURTLE,
As Its Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, William S. Miller, a notary public in and for the county and State aforesaid, do hereby certify that Adolphus C. Bartlett, personally known to me to be the same person who subscribed the foregoing instrument, appeared before me this day in person and acknowledged that he executed the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30th day of December, 1910.

WILLIAM S. MILLER,
Notary Public.

13. That the said indenture of trust was executed and delivered at or about the date it bears, as above set out, that is to say, on, to wit, the 30th day of December, 1910, and long before the revenue act, above referred to, became effective on the 23d day of November, 1921; that the said Federal estate-tax statute, is so far as it provides for a tax upon the transfer made prior to the passage of the said statute, was unconstitutional and void.

14. That the plaintiff in filing its said estate-tax return, as aforesaid, did include in its computation of the gross value of the said estate the value of the properties conveyed, as aforesaid, to the Northern Trust Company as trustee, under the said indenture above set out, and stated therein the value of the said properties to be $104,109.12, thereby increasing the net estate by a similar amount; and the tax upon the said transfer was in the sum of $18,738.02, which was included in the aforementioned sum of $225,407.01, and was paid to the defendant herein on the 29th day of May, 1923, by the plaintiff, under compulsion and in fear of the penalties provided for in the said statute.

15. That it adopts for the purposes of this count of this
71 declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count in this declaration: Numbers 24, 25, 26, 27, 28, 29, 30, and 31, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations concerning the claim for refund, and the denial by the Commissioner of Internal Revenue of refund of the said claim, all of which will more specifically appear by reference to the said paragraphs.

By reason whereof the said defendant became liable, and is bound by law, to refund and pay to the plaintiff the amount so paid, $18,738.02, with interest thereon, according to the statute made and provided.

FOURTH COUNT

For that whereas the plaintiff alleges:

1. That it adopts for the purposes of this count in this declaration the following numbered paragraphs as found in the first count hereof, with like effect as though they were set up in full herein, that is to say, paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, except that the said paragraphs shall be read with reference to the facts set up in this count of this declaration.

11. That the revenue act of 1921, heretofore referred to, which was in full force and effect at the date of the death of the said Adolphus C. Bartlett, imposed a tax upon decedent's net estate, and provided that the said net estate should be determined by deducting from the decedent's gross estate certain allowances provided for in the said statute.

And the said statute further provided as follows:

"SEC. 402. That the value of the gross estate of the decedent, shall be determined by including the value at the time of his death of all property, real or persons, tangible or intangible, wherever situated—

"(a) * * *.

"(b) * * *.

"(c) * * *.

"(d) * * *.

"(e) * * *.

"(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own

72 Life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life."

12. That the said Adolphus C. Bartlett, long prior to the passage of the revenue act above referred to, and at various times during his life, secured policies of insurance on his life, named the beneficiaries therein, and from time to time paid the premiums thereon.

13. That of the said policies of insurance which were in force at the time of his death the said Adolphus C. Bartlett specified the beneficiaries in the policies below listed and retained to himself during his lifetime the right to change the said beneficiaries; that at the time of the death of the said Adolphus C. Bartlett the said policies were payable, and were in fact paid direct, to the beneficiaries named therein, and were not payable, and were not in fact paid, to the executor of the said Adolphus C. Bartlett, or to his estate.

The said policies, and their principal sums, the dates of issue, the beneficiaries named, and principal provisions contained were as follows:

(a) Policy No. 586283, the Mutual Benefit Life Ins. Co., dated December 21, 1911; beneficiary, Maie Bartlett Heard $5,000.00

(b) Policy No. 486405, the Mutual Benefit Life Ins. Company, dated December 22, 1908; beneficiary, Maie B. Heard 5,000.00

(c) Policy No. 267089, Phoenix Life Insurance Co., of Hartford, Conn., dated December 21, 1911; beneficiary, Maie B. Heard 5,000.00

(d) Policy No. 1954164, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Maie B. Heard 5,000.00

(e) Policy No. 1954166, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Maie B. Heard 5,000.00

(f) Policy No. 486407, the Mutual Benefit Life Insurance Company, of Newark, N. J., dated December 22, 1908; beneficiary, Eleanor C. Bartlett. The beneficiary after her marriage became Eleanor Bartlett Perdue, and thereafter, on January 20, 1919, the name of the beneficiary was accordingly changed to Eleanor Bartlett Perdue 5,000.00

73 (g) Policy No. 267082, the Phoenix Mutual Life Insurance Company, of Hartford, Conn., dated December 21, 1911; beneficiary, Eleanor C. Bartlett. The beneficiary after her marriage became Eleanor Bartlett Perdue, and thereafter, on January 20, 1919, the name of the beneficiary was accordingly changed to Eleanor Bartlett Perdue 5,000.00

(h) Policy No. 586286, the Mutual Benefit Life Ins. Company, dated December 21, 1911; beneficiary, Eleanor C. Bartlett. The beneficiary after her marriage became Eleanor Bartlett Perdue, and thereafter, on January 20, 1919, the name of the beneficiary was accordingly changed to Eleanor Bartlett Perdue 5,000.00

(i) Policy No. 1954178, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Eleanor C. Bartlett. The beneficiary after her marriage became Eleanor Bartlett Perdue, and thereafter, on January 30, 1919, the name of the beneficiary was accordingly changed to Eleanor Bartlett Perdue $5,000.00

(j) Policy No. 1954176, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Eleanor C. Bartlett. The beneficiary after her marriage became Eleanor Bartlett Perdue, and thereafter, on January 30, 1919, the name of the beneficiary was accordingly changed to Eleanor Bartlett Perdue 5,000.00

(k) Policy No. 267088, the Phoenix Mutual Life Ins. Company, of Hartford, Conn., dated December 21, 1911; beneficiary, Abby H. Bartlett 5,000.00

(l) Policy No. 588082, the Mutual Benefit Life Ins. Company, dated December 21, 1911; beneficiary, Abby H. Bartlett 5,000.00

(m) Policy No. 496404, the Mutual Benefit Life Ins. Company, dated December 22, 1908; beneficiary, Abby H. Bartlett 5,000.00

(n) Policy No. 1954169, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Abby H. Bartlett 5,000.00

(o) Policy No. 1954162, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Abby H. Bartlett 5,000.00

74 (p) Policy No. 1954168, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Frederic C. Bartlett 5,000.00

(q) Policy No. 1954170, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Frederic C. Bartlett 5,000.00

(r) Policy No. 588084, the Mutual Benefit Life Ins. Company, dated December 21, 1911; beneficiary, Frederic C. Bartlett 5,000.00

(s) Policy No. 496408, the Mutual Benefit Life Ins. Company; beneficiary, Frederic C. Bartlett 5,000.00

(t) Policy No. 267080, the Phoenix Mutual Life Insurance Company, of Hartford, Conn., dated December 21, 1911; beneficiary, Frederic C. Bartlett 5,000.00

(u) Policy No. 267091, the Phoenix Mutual Life Insurance Company, of Hartford, Conn., dated December 21, 1911; beneficiary, Florence D. Bartlett 5,000.00

(v) Policy No. 1954172, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Florence D. Bartlett 5,000.00

(w) Policy No. 1954174, the Mutual Life Insurance Company, of New York, dated December 21, 1911; beneficiary, Florence D. Bartlett 5,000.00

(x) Policy No. 588085, the Mutual Benefit Life Insurance Company, dated December 21, 1911; beneficiary, Florence D. Bartlett 5,000.00

(y) Policy No. 211549, Mutual Life Insurance Company, of New York, dated June 18, 1880; beneficiary, Adolphus C. Bartlett, guardian for his son, Frank D. Bartlett; beneficiary changed by assignment dated February 18, 1919, to Frederic C. Bartlett, Maie Bartlett Heard, and Florence D. Bartlett, share and share alike 2,000.00

(z) Policy No. 496406, the Mutual Benefit Life Insurance Company, of Newark, New Jersey, dated December 22, 1908; beneficiary, Florence D. Bartlett 5,000.00

14. That the plaintiff, in filing its estate-tax return, as aforesaid, did include in the computation of the gross value of the said
75 estate the sum of $122,000, which represented all of the aforementioned principal sums of the said policies of life insurance, excepting policy No. 496406 of the Mutual Benefit Life Insurance Company, of Newark, New Jersey, in the amount of $5,000, referred

to above as item (z), and thereby increased the said net estate a similar amount and paid a tax thereon of $21,960, which said tax was included in the aforementioned sum of $225,407.01, and paid by the plaintiff to the defendant on the 29th day of May, 1923, under compulsion and in fear of the penalties provided in said act.

15. That thereafter the Commissioner of Internal Revenue conducted an investigation of the said return of the plaintiff as said executor of the value of the net estate of Adolphus C. Bartlett, deceased, and included in the computation of the gross estate of the decedent the aforementioned principal sum of $5,000 named in policy No. 496406 of the Mutual Benefit Life Insurance Company, referred to above as item (z), and thereby increased by a like amount the value of the net estate of the said Adolphus C. Bartlett, deceased, as determined for the purpose of the assessment of the so-called estate tax.

16. That thereupon the said Commissioner of Internal Revenue, on or about the 1st day of May, 1924, did assess an additional tax computed on the inclusion in the gross estate of the decedent of the abovementioned principal sum of policy No. 496406 of the Mutual Benefit Life Insurance Company for $5,000, and also the value of certain other properties elsewhere referred to, which additional tax as assessed on all such properties amounted to $314,393.93, of which total amount the sum of $900 represented the additional tax assessed as the result of the inclusion in the gross estate of the decedent of the principal sum of the said policy referred to above as item (z).

17. That it adopts for the purpose of this count of this declaration, with like effect as though they were set up in full herein, the following numbered paragraphs of the first count of this declaration: Numbers 20, 21, 22, 24, and 25, except that the said paragraphs shall here be read with reference to the facts set up in this count of this declaration; and which said paragraphs contain allegations concerning the demand of the Commissioner of Internal Revenue for additional tax, and notice thereof; the payment of the said additional tax to the plaintiff by the defendant; the inclusion in the additional tax of the tax on the insurance in question; the claim for re-
76 fund filed by the plaintiff with the defendant; the denial by the Commissioner of Internal Revenue of the claim for refund, all of which will more specifically appear by reference to the said paragraphs.

18. That the said estate-tax law, being an act of Congress approved November 23, 1921, and entitled "An Act to reduce and equalize taxation, to provide revenue, and for other purposes," is unconstitutional and void in so far as it purports to tax the estate of the decedent by including in the said estate the amount of insurance above referred to and received by other beneficiaries than the estate of the decedent. And the said provisions of the statute in connection therewith are contrary to the provisions of the Constitution of the United States, that no capitation or other assessment shall be laid unless in proportion to the census enumeration, and also contrary to

the provisions of the Constitution of the United States to the effect that no person shall be deprived of property without due process of law, and that the said provisions of the said law are in violation of the limitations on the taxing power of Congress, to the effect that no tax shall be so arbitrary, unreasonable, and unfairly apportioned among those under like circumstances as to amount to a confiscation of property.

19. That even if the said tax law aforesaid is found to be constitutional, no part of the said insurance on the life of Adolphus C. Bartlett payable and in fact paid to others than his estate is, as ought to be, considered a portion of the estate of the deceased, Adolphus C. Bartlett, taxable under the terms of the said act.

By reason whereof the said defendant became liable and is bound by law to refund and pay to the plaintiff the amount so paid, namely, $22,800, with interest thereon, according to the statute made and provided.

CONCLUSION

Nevertheless the defendant, although often requested, has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto refused and still does refuse, to the damage of the said plaintiff in the sum of $300,000, and therefore the said plaintiff brings suit, etc.

WILSON, MCILVAINE, HALE AND TEMPLETON,
Attorneys for the Plaintiff.

STUART I. TEMPLETON,
J. F. DAMMANN, JR.,
Of Counsel.

77 STATE OF ILLINOIS,
County of Cook, ss:

A. B. Caswell, being first duly sworn, deposes and says that he is the 2nd vice president of The Northern Trust Company, an Illinois corporation; that said The Northern Trust Company is executor under the last will and testament, and codicil thereto, of Adolphus C. Bartlett, deceased, and that he is duly authorized to make this affidavit in behalf of said The Northern Trust Company, and in its behalf as executor as aforesaid; that the demand of the plaintiff in the above-entitled cause is for the return and repayment of an internal revenue tax illegally assessed and collected from the plaintiff as an estate tax in connection with the estate of the said Adolphus C. Bartlett, deceased, and paid by said plaintiff to said defendant under protest, the grounds of illegality being set forth in the above and foregoing declaration, which is hereby made a part hereof, and that there is now due from the defendant to the plaintiff, after allowing all its just credits and set-offs, the sum of three hundred and forty-

seven thousand three hundred and sixty-six dollars and ninety-nine cents ($347,366.99), with interest from the dates of the said payments until repaid.

A. B. CASWELL.

Subscribed and sworn to before me this 11th day of May, 1925.

[SEAL.] FRANK G. GRADY,
Notary Public.

[File endorsement omitted.]

In United States District Court

Demurrer

Filed October 7, 1925

And the defendant, Mabel G. Reinecke, collector of internal revenue of the United States of America for the first district of Illi-
78 nois, by Edwin A. Olson, United States attorney, her attorney, comes and defends, etc., when, and says that the declaration and the matters therein contained in manner and form as the same are above set forth are not sufficient in law for the plaintiff to maintain his aforesaid action, and that she, the defendant, is not bound by law to answer the same, and this she is ready to verify.

Wherefore for want of a sufficient declaration in this behalf the defendant prays judgment, and that the plaintiff may be barred from maintaining his aforesaid action, etc.

EDWIN A. OLSON,
United States Attorney,
Attorney for Defendant.

[File endorsement omitted.]

In United States District Court

Stipulation

Filed October 7, 1925

It is stipulated and agreed, by and between the parties to this suit, through their respective attorneys, that the eighth count of the plaintiff's declaration heretofore filed may be dismissed.

(Signed) WILSON, MCILVAINE, HALE & TEMPLETON,
Attorneys for Plaintiff.

(Signed) EDWIN A. OLSON,
United States Attorney,
Attorney for the Defendant.

[File endorsement omitted.]

79 In United States District Court

Order dismissing eighth count of declaration

Oct. 7, 1925

On stipulation of the parties to this suit filed herein it is ordered that this suit be, and the same is hereby, dismissed as to the eighth count in plaintiff's declaration filed in said cause.

In United States District Court

Orders continuing hearing

Thursday, October 15, 1925

Upon motion it is ordered that the defendant's demurrer to the plaintiff's declaration filed in said cause be, and the same is hereby, set for hearing November 16th, A. D. 1925.

Monday, November 16, 1925

On agreement of the parties to this suit now here made in open court it is ordered that the hearing on the defendant's demurrer to the plaintiff's declaration filed in said cause be, and the same is hereby, continued to November 23rd, A. D. 1925.

80 Monday, November 23, 1925

On motion it is ordered that leave be, and the same is hereby, given the defendant to file brief within ten days and plaintiff to file reply brief within ten days thereafter and defendant to file reply brief within twenty days thereafter.

Friday, December 11, 1925

On motion of plaintiff's attorneys it is ordered that the time within which the plaintiff is to file briefs be, and the same is hereby, extended to January 11th, A. D. 1926.

It is further ordered that the time to file reply brief be, and the same is hereby, extended thirty days thereafter.

81 Wednesday, January 13, 1926

On motion of plaintiff's attorneys it is ordered that leave be, and the same is hereby, given the plaintiff to file instanter briefs herein.

In United States District Court

Order overruling demurrer

December 13, 1926

This cause coming on to be heard upon the defendant's demurrer to the plaintiff's declaration filed in said cause and after arguments

of counsel and due deliberation by the court said demurrer is overruled.

It is further ordered that the defendant be and is hereby required to plead to the plaintiff's declaration filed in said cause within thirty days from this date.

82 In United States District Court

Demurrer

Filed Jan. 12, 1927

I

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said first count of the said declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient first count of said declaration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action, etc.

II

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said second count of the said declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient second count of said declaration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action, etc.

III

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said third count of the said declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient third count of said dec-
83 laration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action, etc.

IV

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said fourth count of the said declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient fourth count of said declaration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action etc.

V

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said fifth count of the said declaration, and the matters therein contained, in the manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient fifth count of said declaration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action, etc.

VI

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said sixth count of the said declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient sixth count of said declaration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action, etc.

VII

And the defendant, by Edwin A. Olson, United States district attorney, her attorney, comes and defends, etc., when, etc., and says that the said seventh count of the said declaration, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid

action, and that she, the defendant, is not bound by law to answer the same; and this she is ready to verify.

Wherefore for want of a sufficient seventh count of said declaration in this behalf the defendant prays judgment and that the plaintiff may be barred from maintaining its aforesaid action, etc.

EDWIN A. OLSON,
United States Attorney,
Attorney for Defendant.

[File endorsement omitted.]

In United States District Court

Judgment

March 25, 1927

This cause coming on to be heard upon the demurrer to the plaintiff's declaration, and each count thereof, filed in said cause, and after arguments of counsel and due deliberation of the court said demurrer to the said declaration, and each count thereof, is overruled, to which defendant excepts.

Whereupon the said defendant elects to stand by her said demurrer.

Wherefore the plaintiff ought to have and recover of and from
85 the defendant its damages sustained herein by reason of the premises, to which defendant excepts.

Thereupon reference is had to the court to assess the plaintiff's damages herein; and the court now here, after hearing all the allegations and proofs submitted herein by the plaintiff, and being fully advised in the premises, assesses the plaintiff's damages in the sum of three hundred sixty-seven thousand fifty-two dollars and two cents ($367,052.02), to which defendant excepts.

Therefore it is considered by the court that the plaintiff do have and recover of any from the defendant its said damages of three hundred sixty-seven thousand fifty-two dollars and two cents ($367,052.02) in form as aforesaid by the court assessed, to which defendant excepts.

Enter.

CARPENTER, *Judge.*

In United States District Court

Certificate of probable cause

March 31, 1927

The court hereby finds and certifies that there was probable cause for the acts done by the collector of internal revenue in collecting the

taxes for the recovery of which judgment in the above-entitled cause has been entered.

Enter.

CARPENTER, *Judge.*

86 In United States District Court

Petition for writ of error

Filed May 27, 1927

To the Honorable GEORGE A. CARPENTER,
Judge of the District Court, Aforesaid.

Mabel G. Reinecke, collector of internal revenue for the first district of the State of Illinois, defendant in the above-entitled cause, feeling herself aggrieved by the judgment entered on the 25th day of March, A. D. 1927, comes now by George E. Q. Johnson, United States attorney for the Northern District of Illinois, on her behalf and by direction of the Attorney General of the United States, and petitions said court for an order allowing said defendant to prosecute a writ of error, for the correction of the errors complained of, to the honorable United States Circuit Court of Appeals for the Seventh Circuit, under and according to the laws of the United States in that behalf made and provided.

GEORGE E. Q. JOHNSON,
United States Attorney for the Northern District of Illinois, Eastern Division.

Dated at Chicago, Illinois, May 25th, 1927.

[File endorsement omitted.]

In United States District Court

Assignment of errors

Filed May 27, 1927

Now comes George E. Q. Johnson, United States attorney for the Northern District of Illinois, and by direction of the Attorney General of the United States, is about to petition for a writ of error from the decision and judgment of this court rendered on the 25th day of March, A. D. 1927, in the above-entitled cause, and for the defendant assigns the following errors of law from the said decision and judgment:

87 1. That the District Court of the United States for the Northern District of Illinois, Eastern Division, erred in overruling the demurrer of the defendant to the declaration of the plaintiff.

2. That the said court erred in overruling defendant's demurrer to plaintiff's declaration and to each count thereof.

3. That the said court erred in finding the issues for the plaintiff and against the defendant.

4. That the said court erred in entering judgment against the defendant and in favor of the plaintiff.

Wherefore plaintiff in error prays that the judgment of said court be reversed.

GEORGE E. Q. JOHNSON,
United States Attorney.

Dated at Chicago, Illinois, May 25th, 1927.

[File endorsement omitted.]

In United States District Court

Order allowing writ of error

May 27, 1927

On motion of defendant, by George E. Q. Johnson, United States attorney for the Northern District of Illinois, and upon filing the petition for writ of error and assignment of errors:

It is thereupon ordered that a writ of error be, and the same is, hereby allowed, to have reviewed in the United States Circuit Court of Appeals for the Seventh Circuit, the judgment entered herein on the 25th day of March, A. D. 1927, and that citation issue returnable thirty days from this date.

Enter.

CARPENTER, *Judge.*

88 In United States District Court

Writ of error and return

Filed May 27, 1927

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the Judges of the District Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the Northern Trust Company, as executor under the last will and testament of A. C. Bartlett, deceased, vs. Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, a manifest error hath happened, to the great damage of the said Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do com-

mand you, if judgment be therein granted, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Wm. Howard Taft, Chief Justice of the United States, the 27th day of May, in the year of our Lord one thousand nine hundred and 27.

CHARLES M. BATES,
Clerk of the District Court of the United States
for the Northern District of Illinois.

Allowed by—
CARPENTER, *Judge.*

89 NORTHERN DISTRICT OF ILLINOIS, *ss:*

In obedience to the within writ I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit a true and complete transcript of the record and proceedings in the foregoing entitled cause this 7th day of June, A. D. 1927.

[SEAL.] CHARLES M. BATES,
Clerk United States District Court,
Northern District of Illinois.

[File endorsement omitted.]

In United States District Court

Precipe for transcript of record

To CHARLES M. BATES,
Clerk of the District Court of the United States
for the Northern District of Illinois, Eastern Division.

You are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to a writ of error allowed in the above entitled cause, and to include in such transcript of record the following papers, to wit:

1. Placita.
2. Precipe filed May 12, 1925.
3. Process.
4. Declaration.
4. Return on process.
6. Demurrer of defendant filed October 7, 1925.
6½. Stipulation filed October 7, 1925.

7. Order entered on October 7, 1925, pursuant to stipulation, dismissing the eighth count of the declaration.

8. Order entered on October 15, 1925, setting demurrer to declaration for hearing on November 16, 1925.

9. Order entered on November 16, 1925, continuing hearing on demurrer to November 23, 1925.

10. Order entered on November 23, 1925, directing defendant to file brief in ten days, plaintiff to file reply brief ten days thereafter, and defendant to file reply brief twenty days thereafter.

90 11. Order entered on December 11, 1925, continuing time for plaintiff to file reply brief to January 11, 1926, and time for defendant to file reply brief extended to thirty days thereafter.

12. Order entered on January 13, 1926, granting plaintiff leave to file reply brief instanter.

13. Order entered on December 13, 1926, overruling demurrer to declaration and giving defendant leave to plead in thirty days.

14. Demurrer filed on January 12, 1927.

15. Order entered on May 25, 1927, overruling demurrer to declaration, together with exceptions thereto, and judgment for the plaintiff for $367,052.02.

16. Order of certificate of probable cause entered on March 31, 1927.

17. Petition for writ of error.

18. Order of May 27th, 1927, allowing writ of error.

19. Assignment of errors.

20. Citation.

21. Writ of error.

22. Praecipe for transcript of record.

GEORGE E. Q. JOHNSON,
United States Attorney.

Dated at Chicago, Illinois, this 28th day of May, A. D. 1927.

[Clerk's certificate to foregoing transcript omitted in printing.]

91 [Citation in usual form showing service on F. J. Koch, filed June 6, 1927, omitted in printing.]

92 [Title omitted.]

[Appearances of counsel omitted in printing.]

93 In United States Circuit Court of Appeals

Court opened by proclamation of crier.

Present: Hon. Evan A. Evans, Circuit Judge, presiding; Hon. George T. Page, Circuit Judge; Hon. Albert B. Anderson, Circuit Judge; Edward M. Holloway, clerk; Palmer E. Anderson, marshal.

MABEL G. REINECKE, Collector, etc.	Error to the District Court of the United States for the Northern District of Illinois, Eastern Division
3928 vs.	
THE NORTHERN TRUST CO., Executor, etc.	

Order setting cause

October 4, 1927

It is ordered by the court that this cause be, and the same is hereby, set down for hearing on Thursday, November 10, 1927.

94 [Minute entry of argument and submission Nov. 10, 1927, omitted in printing.]

95 In the United States Circuit Court of Appeals

[Title omitted.]

Opinion

December 12, 1927

Before EVANS, PAGE, and ANDERSON, Circuit Judges

Opinion by PAGE, Cir. J.: After the collector of internal revenue, defendant (plaintiff in error), elected to abide by her demurrer to the plaintiff's (defendant in error's) declaration, the plaintiff, executor of the will of A. C. Bartlett, who died May 30, 1922, was awarded a judgment for that part of the tax collected from the executor, under the revenue act of 1921, because the Government had included as a part of the gross estate of decedent the property covered by five trusts created in 1919, one in 1915, and one in 1916.

96 Defendant states the questions involved as follows:

1. Were the trusts created by Adolphus C. Bartlett intended to take effect in possession or enjoyment within the meaning of section 402 (c) of the revenue act of 1921 (42 U. S. Stats. at L., p. 277)?

2. Can Congress include in a decedent's gross estate the value of property conveyed by a revocable trust instrument prior to September 8, 1916?

3. Can Congress include in a decedent's gross estate the value of property conveyed after September 8, 1916, by a trust instrument which is revocable by the settlor acting jointly with a majority of the beneficiaries?

Defendant contends for an affirmative answer to each.

In each of the trusts there was an absolute transfer and conveyance of the property to the trustee.

Under the first of the 1919 trusts the income was to be paid to the wife and children until the period of distribution of the corpus, after the death of the settlor. The settlor reserved the right (1) to supervise the reinvestment of the trust funds; (2) to require the trustee to execute such proxies for voting stocks transferred as he might wish; (3) to control all leases made; (4) jointly with the majority of the beneficiaries, to alter, change, or modify the terms of the trust.

The other four 1919 trusts were severally made for the benefit of a child of the settlor. As drawn, they provided for the accumulation of the whole income until the period of distribution of the corpus, after the death of the settlor, except so much thereof as the settlor might, from time to time, direct to be paid to the beneficiary named. By amendments made on June 28, 1921, in the manner provided in the trust instruments, the beneficiary under each was to be paid the income. The corpus of the trust fund went to the beneficiary or to his heirs or devisees, and, in default of such heirs or devisees, it went to the issue of the settlor.

All the 1919 trusts gave very full powers to the trustee. The last four contained the same reservations as the first as above set out.

In the 1903 trust it was provided that the income was to be paid to the settlor for life, then to a daughter until the termination of the trust. The corpus was to be paid to the daughter, or in the
97 event of her death before distribution it was to go in much the same manner as provided in the 1919 trusts.

Except that another daughter is the beneficiary, the 1910 trust is identical with the 1903 trust. In each the settlor reserved the right of revocation.

The relevant portions of the statute are as follows:

"SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * * * *

"(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title." (42 U. S. Stats. L. p. 277; sec. 6333¾c, U. S. Compiled Stats., 1923 Supp.)

The argument that the trusts were "intended to take effect in possession or enjoyment" within the meaning of the statute is based upon three facts disclosed in the 1919 trusts: (a) That the income was in whole or in part to be accumulated until after the settlor's death; (b) that the corpus was to be distributed after his death; (c) that the trusts were revocable by the joint act of the settlor and a majority of the beneficiaries.

As to the 1903 and 1910 trusts, the argument for an affirmative answer is based upon the provisions found in those trusts: (a) That the settlor took the whole income for life; (b) that the corpus was

to be distributed after his death to the beneficiary named in the trust; (c) that the trusts were revocable at the will of the settlor.

The decisions of the District Courts and the Courts of Appeal, which have considered section 402 (c), are not in harmony
98 with respect to transfers not intended to take effect until after the death of the settlor, and we are of opinion that more discussion will not help to solve the riddle.

No question of intention to evade a tax is here urged. We are of opinion that the reservations in the 1919 trusts, as above herein enumerated, must be held to be reasonable and prudent provisions which in no way affect or defeat the real purposes of the trusts. The settlor, by those reservations, took nothing for himself, but each reservation is a pledge on his part of advice and assistance to the trustee for the benefit of the beneficiaries.

Our views harmonize with those expressed by the Supreme Court in Shukert v. Allen (— U. S. —), decided March 21, 1927, and we feel that they are decisive of the case under the 1919 trusts, and that their terms do not bring those trusts within the provisions of section 402 (c). The court there said:

"It seems to us tolerably plain, that when the grantor parts with all his interest in the property to other persons in trust, with no thought of avoiding taxes, the fact that the income vested in the beneficiaries was to be accumulated for them instead of being handed to them to spend, does not make the trust one intended to take effect in possession or enjoyment at or after the grantor's death."

Even if it be conceded that the 1903 and 1910 trusts were conveyances intended to take effect in possession or enjoyment at or after the settlor's death, then, on the authority of Nichols v. Coolidge (— U. S. —), decided May 31, 1927, we must hold adversely to defendant's contention as to those trusts. It was there held:

"And we must conclude that section 402 (c) of the statute here under consideration, in so far as it requires that there shall be included in the gross estate the value of property transferred by a decedent prior to its passage merely because the conveyance was intended to take effect in possession or enjoyment at or after his death, is arbitrary, capricious, and amounts to confiscation."

The 1903 and 1910 trusts were created many years before there was any statute of the kind here involved, and under the authority of Jones v. Clifton (101 U. S. 225), we hold that the title and the possession of the property passed out of the settlor, and that as
99 the right to revoke was not a property right in him there was nothing that passed from the settlor, at his death, either to the beneficiaries or the trustees.

The judgment is affirmed.

100 In United States Circuit Court of Appeals

[Title omitted.]

Judgment

Dec. 12, 1927

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

101 In United States Circuit Court of Appeals

Stipulations and orders staying mandate

It is hereby stipulated by and between the parties to the above-entitled cause, by their respective attorneys, that the mandate in the above-entitled cause may be stayed until January 16, A. D. 1928.

J. F. Dammann, Jr.,
Stuart J. Templeton,
Attorneys for Defendant in Error.
George E. Q. Johnson,
A. W. Gregg,
Attorneys for Plaintiff in Error.

[Endorsed:] Filed December 31, 1927. Edward M. Holloway, clerk.

Saturday, December 31, 1927

Pursuant to filing of stipulation of counsel it is now here ordered that the mandate of this court in this cause be, and the same is hereby, stayed until January 16, 1928.

102 STIPULATION

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective attorneys, that the mandate in the above-entitled cause may be stayed until February 15, A. D. 1928.

J. F. Dammann, Jr.,
Stuart J. Templeton,
Attorneys for Defendant in Error.
George E. Q. Johnson,
A. W. Gregg,
Attorneys for Plaintiff in Error.

[Endorsed:] Filed January 16, 1928. Edward M. Holloway, clerk.

Monday, January 16, 1928

Pursuant to stipulation of counsel it is now here ordered that the mandate in this cause be, and the same is hereby, stayed until February 15, 1928.

103 STIPULATION

It is hereby stipulated by and between the parties to the above-entitled cause, by their respective attorneys, that the mandate in the above-entitled cause may be stayed to and including March 10, 1928.

J. F. DAMMANN, Jr.,
STUART J. TEMPLETON,
Attorneys for Defendant in Error.
GEORGE E. Q. JOHNSON,
A. W. GREBE,
Attorneys for Plaintiff in Error.

[Endorsed:] Filed February 15, 1928. Edward M. Holloway, clerk.

Wednesday, February 15, 1928

Pursuant to stipulation of counsel it is now here ordered that the mandate in this cause be, and the same is hereby, stayed until March 10, 1928.

104 [Certificates to foregoing transcript omitted in printing.]

105 Supreme Court of the United States

Order allowing certiorari

Filed April 23, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.